

## **Exhibit 7**



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In Re: Methyl Tertiary-Butyl Ether  
("MTBE") Products Liability Litigation**

) **Master File C.A. No. 1:00-1898**

) **MDL 1358 (SAS): No. M21-88**

**This Document Relates To:**

*Commonwealth of Puerto Rico, et al. v Shell  
Oil Co., et al.*  
No. 07 Civ. 10470 (SAS)

**NON-SITE-SPECIFIC DESIGNATION AND DISCLOSURE OF VIC DUGAN  
FORMER EMPLOYEE OF EXXON MOBIL CORPORATION  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 26(a)(2)(C)**

1. Defense counsel cannot anticipate all evidence Plaintiffs may offer at trial and, consequently, cannot identify with certainty every opinion that may be elicited from this witness at trial.

2. In compliance with F.R.C.P. 26(a)(2)(C) and Judge Scheindlin's prior statements advising the parties to designate each individual that may provide opinion testimony, we have identified herein areas in which Mr. Dugan is currently expected to offer opinion testimony. Defendant ExxonMobil does not waive the right to elicit other opinions not described herein in response to unanticipated proofs offered at trial by Plaintiffs.

3. Mr. Dugan was previously deposed in the *South Tahoe* litigation on August 1, 2000 and in MDL 1358 on May 21, 2007. Mr. Dugan also provided trial testimony on certain of the below topics in the *City of New York* litigation on September 21, 2009 and September 23, 2009, in *Allison, et al. v. Exxon Mobil Corp, et al.*, 03-C-07-3809 (Circuit Court, Baltimore, MD) on June 7, 2011, and in the *New Hampshire* litigation on March 5, 2013, and March 6, 2013. To the extent that Mr. Dugan provides opinion testimony as described below, he is expected to rely on facts contained in his depositions and trial testimony as well as documents produced by ExxonMobil, Esso, and other parties, discovery responses by ExxonMobil, Esso, and other parties. Documents previously produced that Mr. Dugan may rely upon include MDL1358DUGAN-000001 to 014480; MDL1358-XOM-DTU-0000001 to 0026250; XOM-DTU-00000001 to 00062849; and XOM-MDL1358hExxonDTU-0000001 to 0094395.

4. Mr. Dugan is expected to testify regarding the refining and distribution of gasoline. Mr. Dugan will offer the opinion that Exxon's decision to use MTBE was reasonable

at the time to replace lead in gasoline. Mr. Dugan will offer the opinion that Exxon's use of MTBE to replace lead in gasoline was reasonable and necessary to address gasoline demand and to meet octane requirements.

5. Mr. Dugan will offer opinions about Exxon's evaluation of MTBE prior to deciding to blend it into Exxon product. Mr. Dugan will offer opinions concerning Exxon's assessment of the feasibility of alternatives to MTBE including availability, cost and impact on product quality, drivability, consumer prices and the environment. Mr. Dugan will offer the opinion that alternatives to MTBE to replace lead in gasoline were not viable and/or not viable as the sole additive to replace lead in gasoline Mr. Dugan will offer opinions about the scope and extent of the process used by Exxon to make the decision to use MTBE.

6. Mr. Dugan's opinions in these areas are based, in part, on (1) ExxonMobil produced documents discussing MTBE and alternatives; (2) his personal experiences with Exxon, ExxonMobil and their current or former affiliates in these areas; and (3) Mr. Dugan's conversations with current or former employees of Exxon, ExxonMobil and their current or former affiliates regarding these topics.

7. Mr. Dugan has not reviewed any documents specific to Puerto Rico and is not expected to offer any opinions specific to Puerto Rico.

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will offer opinions concerning the assessment of alternatives to MTBE including consideration of their feasibility, cost and/or impact on consumer prices. Mr. Eizember will also offer opinions concerning the potential for supply disruptions using MTBE or other additives to replace lead. Mr. Eizember will offer the opinion that MTBE was the most cost effective, secure means to replace lead, maintain octane, enhance oxygenation and meet environmental goals and objectives. Mr. Eizember will offer opinions concerning the feasibility of producing conventional gasoline without MTBE and the impact on product quality requirements. Mr. Eizember is also expected to offer opinions concerning the documents and spreadsheets used internally to track the importation, sale and distribution of petroleum product.

5. Mr. Eizember is expected to testify regarding the technical specifications for gasoline, including those set by the federal government and state governments, and Mr. Eizember is expected to opine as to the necessity to make changes to ExxonMobil's refineries in response to changes to laws on gasoline specifications, including but not limited to the Clean Air Act Amendments.

6. Mr. Eizember is expected to testify regarding the distribution of gasoline from Exxon's refineries, including the modes of distribution, and Mr. Eizember is expected to opine as to the necessity to make changes to ExxonMobil's gasoline distribution in response to changes to laws, including but not limited to the Clean Air Act Amendments.

7. Mr. Eizember is expected to testify that ExxonMobil was required to begin planning for compliance with the Clean Air Act Amendments, including planned changes to its refineries, by the late 1980s and early 1990s.

8. Mr. Eizember is expected to testify regarding ExxonMobil's opposition to the oxygenate mandate, and is expected to opine that ExxonMobil could have met government specifications without following a set formulation.

9. Mr. Eizember is expected to opine that there was insufficient domestic supply of oxygenates to meet the requirements of the Clean Air Act Amendments, including the oxyfuel and reformulated gasoline requirements.

10. Mr. Eizember's opinions in these areas are based, in part, on (1) ExxonMobil produced documents discussing MTBE and alternatives; (2) his personal experiences with Exxon, ExxonMobil and their current or former affiliates in these areas; (3) his personal experience working at the Benicia and Baton Rouge refineries; and (4) his conversations with current or former employees of Exxon, ExxonMobil and their current or former affiliates regarding these topics.

11. Mr. Eizember has not reviewed any documents specific to Puerto Rico and is not expected to offer any opinions specific to Puerto Rico.

**FILED UNDER SEAL**

## Kenneth Stern

|   |   |
|---|---|
| <p style="text-align: right;">Page 170</p> <p>1 mixed xylenes from time to time as such, then they</p> <p>2 certainly would have been available as a blend stock</p> <p>3 as well; true?</p> <p>4 A. Would have been available, but that</p> <p>5 doesn't mean that they were available as a viable</p> <p>6 blending option for their gasoline.</p> <p>7 Q. Why not?</p> <p>8 A. You remember that Core had a restriction</p> <p>9 on the volume of aromatics it could put into its</p> <p>10 gasoline because of the antidumping legislation.</p> <p>11 Q. Which was after 1995; correct?</p> <p>12 A. Correct. This was the 1990 antidumping</p> <p>13 rules, came into effect January '95. So that</p> <p>14 restricted Core to 41 percent aromatics, I think, on</p> <p>15 average.</p> <p>16 And -- and, remember, the average</p> <p>17 for the refining industry in the United States</p> <p>18 compared to Core's 41 percent was 28 percent. So</p> <p>19 Core was already very, very high in aromatics</p> <p>20 compared to the average U.S. refiner.</p> <p>21 That doesn't mean 41 versus 28 was</p> <p>22 necessarily a bad thing. I'm simply pointing out to</p> <p>23 you it was different. So they were very high in</p> <p>24 aromatics. The suggestion that perhaps they could</p> | <p style="text-align: right;">Page 172</p> <p>1 it's larger than TBA and MTBE.</p> <p>2 Q. And you also see private purchases for</p> <p>3 toluene?</p> <p>4 A. Yes.</p> <p>5 Q. And if you'll just flip the pages with</p> <p>6 me, but you will see, relatively consistent</p> <p>7 purchases of mixed xylenes. And I say "consistent,"</p> <p>8 consistent with their purchases of MTBE throughout</p> <p>9 the time period, right?</p> <p>10 A. I'm not quite sure what you want me to</p> <p>11 look at. I do see purchases of mixed xylenes, and I</p> <p>12 see that they are, at least in the years I'm looking</p> <p>13 at or these months -- years, they are larger than</p> <p>14 their purchases in -- what did you say? MTBE,</p> <p>15 right?</p> <p>16 Q. MTBE.</p> <p>17 A. Yeah. So here in 1983, 339 versus 310,</p> <p>18 and in 1984, it looks like 535 versus 441. So,</p> <p>19 yeah, I mean based on this sample, yeah, it looks</p> <p>20 like they were buying substantial amounts of mixed</p> <p>21 xylenes and more mixed xylenes than MTBE, at least</p> <p>22 for these years.</p> <p>23 <u>Q. You're not opining or testifying that</u></p> <p>24 <u>mixed xylenes or toluene weren't available on the</u></p>  |
| <p style="text-align: right;">Page 171</p> <p>1 have just used more aromatics in their gasoline</p> <p>2 because it was available is not a good suggestion.</p> <p>3 Q. Well, certainly, before 1995 had MTBE</p> <p>4 not been available as a blend stock, then Core had</p> <p>5 available and could have used either toluene or</p> <p>6 mixed xylenes?</p> <p>7 A. Yes, they could have. And --</p> <p>8 Q. And did?</p> <p>9 A. -- to return to a familiar theme, there</p> <p>10 would have been environmental implications for doing</p> <p>11 that.</p> <p>12 Q. I'm going to show you what's been</p> <p>13 previously marked as Scharre Exhibit 8. But in</p> <p>14 connection with having mixed xylenes and toluene not</p> <p>15 only available internally, they also had it</p> <p>16 available through the market as a purchased product.</p> <p>17 I want you to take a look at this -- this exhibit.</p> <p>18 A. Okay.</p> <p>19 Q. You see here in 1982, you'll see</p> <p>20 purchases of MTBE and TBA. But you'll also see</p> <p>21 relatively significant purchases of mixed xylene;</p> <p>22 correct?</p> <p>23 A. It's hard for me to comment on</p> <p>24 "relatively significant," except in the context of</p>  | <p style="text-align: right;">Page 173</p> <p>1 <u>market to use as an octane-increasing blend stock</u></p> <p>2 <u>for gasoline, are you?</u></p> <p>3 <u>A. Oh, I'm not suggesting that, no. I</u></p> <p>4 <u>would suggest to you, as you already know in the</u></p> <p>5 <u>context of Core, that there are potentially</u></p> <p>6 <u>higher-value uses for mixed xylenes and even toluene</u></p> <p>7 <u>than gasoline is. All right?</u></p> <p>8 So, again, let's just return to the</p> <p>9 first page for simplicity. I see purchases of</p> <p>10 191,000 barrels of mixed xylenes, but I don't know</p> <p>11 if that was destined for gasoline blend stock.</p> <p>12 Q. Oh, exactly. And the only thing I'm</p> <p>13 suggesting is that they were -- throughout the</p> <p>14 course of your report, you're suggesting that Core</p> <p>15 wouldn't have wanted to divert aromatics from</p> <p>16 production of higher-value products --</p> <p>17 MR. DILLARD: Object to the form.</p> <p>18 Q. (BY MR. PETIT) -- to use -- to use in</p> <p>19 place of MTBE and finished gasoline? And what I'm</p> <p>20 suggesting, sir, is that they wouldn't have had to</p> <p>21 divert anything if it was available on the market to</p> <p>22 purchase?</p> <p>23 MR. DILLARD: Object to the -- to</p> <p>24 the form and misstatement implicit in the question.</p> |



## **Exhibit 8**

COMMONWEALTH OF PUERTO RICO

CHAMBER OF REPRESENTATIVES

13<sup>th</sup> Legislative  
Assembly

7<sup>th</sup> [handwritten:] *Extra Ordinary*  
Session

REPORT

CHAMBER RESOLUTION 7008

~~October~~ [handwritten:] *November 29, 2000*

TO THE CHAMBER OF REPRESENTATIVES:

Your Commissions of Socioeconomic Development, Planning and Natural Resources and Environmental Quality of the Chamber of Representatives of Puerto Rico present to this Honorable Body the report on Chamber Resolution 7008 containing their findings, conclusions and recommendations.

SCOPE OF THE MEASURE

The purpose of Chamber Resolution 7008 is to order the Commissions of Socioeconomic Development, Planning and Natural Resources and Environmental Quality of the Chamber of Representatives of Puerto Rico to carry out a study to find out the presence of methyl tertiary butyl ether (MTBE), in the preparation of gasoline in Puerto Rico, as well as that imported; to know its risks and proper handling; and study alternatives to replace said chemical.

REPORT

This measure arises from the concerns of reports issued in various states of the United States related to the detection of MTBE in underground water, in concentrations found to be up to 50 parts per billion (ppb), such as occurred in the aquifer under an industrial plant in South Brunswick Township in New Jersey.

In discharging this legislative mandate, your Socioeconomic Development Commission requested presentations from the Environmental Quality Board, Gasoline Retailers Association of Puerto Rico, the gasoline distributing companies Esso, Shell, Gulf and Texaco to know their opinions on the measure.

To understand what MTBE is and its use as additive in gasoline, we must first establish the definitions of the elements that must be mentioned for the understanding of the matter in discussion.

**Gasoline** — is a mixture of light liquid hydrocarbons used as fuel in internal combustion engines. It is produced by fractional distillation of petroleum; by condensation or absorption of natural gas; by thermal or catalytic decomposition of petroleum or its fractions; or by polymerization of hydrocarbons with less molecular weight. It is a colorless, light brown or pink liquid, and it is extremely flammable. In most stations where gasoline is sold, it is offered in three different grades of unleaded gasoline. They are regular-87 octane, mid-grade-89 octane and premium-93 octane. The refinery product is generally regular 87 octane gasoline. The octane rating is increased by addition of oxidants to regular gasoline. Presently, the most widely used is Methyl tertiary-butyl ether (MTBE) which replaced lead, already discontinued many years ago due to its harmful characteristics.

**Octane** — is a measure of the ability of gasoline to resist acute metallic sounds in the engine (pistons) as a result of the premature igniting of the mixture of gasoline and air in one or several cylinders. These metallic sounds may damage the engine if they are not corrected in time. In most automobiles, there is no benefit obtained with the use of higher octane rating gasoline. The octane rating required by vehicles is mainly determined in the basic design. Variations in engines due to tolerances in the manufacturing process may cause the vehicles of the same model to require different octane gasoline. The best way of knowing what gasoline to use is by referring to the vehicle manual which indicates the type of gasoline to be used. However, as a new car is driven, its octane requirement may change due to the accumulation of

deposits in the combustion chamber. This action continues until it reaches a stable condition, which typically occurs at 15,000 miles of driving.

**Reformulated Gasoline** - Reformulated gasoline has the purpose of reducing the degree of contaminants in the environment through the gas expulsion system. This gasoline is also obtained by addition of additives, mostly oxygenates, based on ethanol, which may occur at the level of the refinery or distributor. This gasoline is required in the states whose atmosphere is highly saturated with volatile organic compounds (VOCs) and nitrogen oxides (NOx). **This is not the case in Puerto Rico.**

**MTBE** – Is a colorless liquid used to increase the octane rating in the gasoline, in order to reduce or eliminate the acute metallic sound of the pistons in internal combustion engines with ignition of the mix by spark. Molecular Formula  $C_5H_{12}O$ . It has great morbidity in earth, so that it can easily reach underground water. To reach the earth, there must be a gasoline spill, in which it is an additive. The Environmental Protection Agency (EPA) has tentatively classified MTBE as a carcinogen in human beings, since it has been demonstrated that this chemical had carcinogenic effects on laboratory animals. In 1981, EPA approved the use of MTBE with a concentration of 10% per value, which was increased to 15% by volume in 1988.

In 1996, the use of reformulated gasoline started in California. The refineries in California selected MTBE as oxidant to reduce emissions in automobiles. From that moment, MTBE started being detected in underground waters, probably caused by leaks in the tanks. After a study of the University of California on the health and environment related to MTBE, the Governor of the State of California decreed an Executive Order on March 25, 1999, excluding MTBE from the gasoline to be provided as of December 31, 2002. The truth is that there is still no reliable scientific evidence to demonstrate that MTBE produces cancer in humans.

From the hearings held, it appeared that most gasoline used in P.R. does not contain MTBE, because the island is not one of the states that requires reformulated gasoline. However, some of this gasoline does come to the



market, so that it will depend on the producer or refinery that manufacture it. Even so, none of the local distributors has exceeded so far the parameters established by EPA.

#### CONCLUSION AND RECOMMENDATIONS

The huge majority of vehicles in Puerto Rico require regular gasoline by design. The premium gasoline sold in Puerto Rico is mostly the product of sales advertising.

The new federal and local requirements related to the storage of gasoline, where underground tanks are practically encapsulated, reduce the possibility of contamination by MTBE, so that we understand that it is not necessary to take additional measures for now, except continue with periodic legislative monitoring.

Due to all of the above, the Socioeconomic Development Commission of the Chamber of Representatives submit the Report of Chamber Resolution 7008, as required by this Honorable Body.

[signature]

**Antonio Silva Delgado**

**President**

**Commission for Socioeconomic Development  
Planning**

[signature]

**Jorge Acevedo Méndez**

**President**

**Commission for Natural Resources**

**CERTIFICATION OF DOCUMENTS FOUND IN THE FILE:**

In the capacity of custodian of the files of the Legislative Assembly of Puerto Rico, I certify that we have diligently reviewed the file of the Chamber Resolution 7008, (hereinafter Chamber Resolution 7008) found in our archives and we delivered a true and exact copy of all documents that are part of the file to Atty. Jorge A. Sagardía, including:

- 1) Copy of the Text of Final Approval of Chamber Resolution 7008 dated June 30, 2000. (2 pages)
- 2) Report on Chamber Resolution 7008 by the Internal Affairs Commission of the Chamber dated June 29, 2000, signed by Augusto Sánchez Fuentes (Interim President — Internal Affairs Commission). (2 pages)
- 3) Report on Chamber Resolution 7008 by the Socioeconomic Development, Planning and Natural Resources Commission of the Chamber dated November 29, 2000, signed by Antonio Silva Delgado (President — Socioeconomic Development and Planning Commission) and Jorge Acevedo Méndez (President — Natural Resources Commission). (4 pages)
- 4) Presentation of The Shell Company (Puerto Rico) Limited dated August 15, 2000, signed by Juan I. Vázquez (Country Chairman). (3 pages)
- 5) Presentation of Caribbean Petroleum Limited Partnership dated August 15, 2000, signed by Eric Guzmán (Marketing Manager). (3 pages)
- 6) Presentation of the Gasoline Retailers Association of Puerto Rico, Inc. dated August 17, 2000. (5 pages)
- 7) Presentation of the Department of Health dated September 11, 2000, signed by Carmen Feliciano de Melecio, M.D. (Secretary of Health). (2 pages)
- 8) Presentation of the Department of Consumer Affairs dated September 14, 2000, signed by Jose M. Cintrón (Undersecretary). (2 pages)
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- 10) Presentation of Texaco Puerto Rico Inc. dated September 20, 2000, signed by Cándido Rivera (Marketing Manager). (3 pages)
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The file consists of various documents – with a combined total number of 33 pages.

ISSUED today, October \_\_, 2010, in San Juan, Puerto Rico.

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OCT. 13, 2010 9:15 AM  
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PR-LEG-0000082

## **The Shell Company (Puerto Rico) Limited**

[ logo]

August 15, 2000

Honorable Antonio Silva Delgado  
President  
Socioeconomic Development and Planning Commission  
Government of Puerto Rico  
Chamber of Representatives  
Capitol, P.O. Box 2228  
San Juan, Puerto Rico 00901

RE: Chamber Resolution 7008

Honorable Commission:

The Shell Company (Puerto Rico) Limited respectfully submits its presentation concerning Chamber Resolution 7008. First of all, it is important to indicate that the situation related to the use of MTBE in gasoline requires a constructive dialog among the parties involved, to determine which alternative, if any, is necessary to implement, taking into account the concrete studies and findings on the real impact of MTBE on the underground water of our Country. Any intervention would be premature without evaluating whether this impact exists. Let's look at the core of this situation and the realities faced by the oil industry and all the parties involved.

Due to the serious air quality problems existing in several states of the United States, the Federal Environmental Protection Agency (better known by its initials, EPA) required the oil industry to introduce the use of a gasoline that would reduce the emissions of carbon monoxide (CO) for certain specific states. This gasoline, known as reformulated gasoline, was required in the amendments made to the Clean Air Act in 1990. One of the reformulated gasoline requisites is to contain oxygenates to provide a content of oxygen of at least 2% by mass, which is equivalent to 11% of MTBE, after being formulated. These amendments were made specifically for the states that did not comply with air quality standards for ozone. Fortunately, Puerto Rico was not included in that list, since it complied and complies with the established air quality standards.

The increased use of reformulated gasoline in the United States appears as a means to comply with legal requisites on minimum oxygen content and reduce the emissions of the exhaust lines of vehicles, mainly carbon monoxide in cars without catalytic converters. EPA assessed and promoted the use of MTBE to reduce these emissions.

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PR-LEG-0000049



Honorable Antonio Silva Delgado  
Socioeconomic Development and Planning Commission  
Chamber Resolution 7008  
August 15, 2000  
Page 2

MTBE, "methyl-tertiary butyl ether," is a common chemical widely used as gasoline additive. It is an oxygenate, which means that it increases the oxygen content in gasoline. It is manufactured combining methanol (produced from natural gas methane) and isobutylene (from various refineries, chemical plants and liquefied natural gas). Using MTBE in gasoline creates a product with cleaner burning.

MTBE is manufactured within the legal limits established by the laws of both the United States and Europe, at concentrations of up to 11% by volume (depending on the density of the fuel). MTBE was originally developed and used as a substitute for lead to enhance octane rating.

Recent information suggests that MTBE is not more toxic than the other components of gasoline. MTBE has been extensively studied in conventional toxicological tests and there is no concrete evidence to suggest that the use of MTBE in gasoline represents a risk to human health.

The studies on the possible effects of MTBE on health include results from three long-term carcinogenic studies in animals. The results of these studies are available to the public at large, and were examined in 1998 by the "International Agency for Research on Cancer" (IARC), which is part of the World Health Organization, with the mission of understanding and minimizing the causes of cancer in humans. After the revision of the available data for MTBE, said agency concluded that, even though there is limited evidence of carcinogenesis in some animal studies, in general MTBE "is not classifiable as carcinogenic for humans" (see <http://www.IARC.fr>). In other words, there is no compelling reason to sustain that MTBE causes cancer in humans.

The reason why this controversy has arisen in the United States is because of the increase in the use of MTBE in fuels and the extensive use of relatively shallow underground water bodies as drinking water sources. Even though MTBE has low toxicity, it has a very low threshold for odor and taste, which causes even low levels (20 to 40 ppm) to cause water to be unacceptable.



Honorable Antonio Silva Delgado  
Socioeconomic Development and Planning Commission  
Chamber Resolution 7008  
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Page 3

On the Island, the situation of MTBE should be studied and analyzed much more deeply, since the sources of drinking water originating from underground water bodies are mainly deep wells. Since this is an island, the water must be in continuous movement and is not stored underground. We must also consider that the threshold limits established, both by EPA and by JCA [Environmental Quality Board] and AAA [Water & Sewer Authority], do not allow supplying low quality drinking water.

Being aware of the potential dangers that a spill may cause, The Shell Company (Puerto Rico) Limited has an aggressive program for improvement of underground storage tanks, including an aggressive monitoring of all inventory systems and controls. In the short-term, our priority is to promote and support the dialogue between the oil industry and the parties involved, such as the government, the health and water authority and vehicle manufacturers, so as to proceed and provide an effective manner to take care of the concern expressed by this Honorable Commission in Chamber Resolution 7008. We respectfully sustain that the term of six months provided in Chamber Resolution 7008 is too short in this case to carry out the necessary studies to responsibly take care of this situation and support dialogue.

I am at your disposal for the questions you may have.

Sincerely,

[signature]  
Juan I. Vázquez  
Country Chairman

**CERTIFICATION OF DOCUMENTS FOUND IN THE FILE:**

In the capacity of custodian of the files of the Legislative Assembly of Puerto Rico, I certify that we have diligently reviewed the file of the Chamber Resolution 7008, (hereinafter Chamber Resolution 7008) found in our archives and we delivered a true and exact copy of all documents that are part of the file to Atty. Jorge A. Sagardía, including:

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PR-LEG-0000082



## Caribbean Petroleum Limited Partnership

August 15, 2000

Honorable Antonio Silva  
President  
Socioeconomic Development and Planning Commission  
Chamber of Representatives of Puerto Rico  
San Juan, Puerto Rico 00901

Re: Call to Public Hearings  
Chamber Resolution 7008

*"To order the Socioeconomic Development, Planning and Natural Resources Commission and Environmental Quality of the Chamber of Representatives of Puerto Rico to carry out a study to find out the presence of "Methyl Tertiary Butyl Ether" (MTBE), in the preparation of gasoline in Puerto Rico, as well as that imported; to know its risks and proper handling; and study alternatives to replace said chemical."*

Honorable Antonio Silva:

My name is Eric Guzmán Janer, "Marketing Manager" of Caribbean Petroleum Corporation, in which capacity I appear in this public hearing to present our comments concerning Chamber Resolution 7008.

I am accompanied by Atty. Norma Cotti, legal advisor of Caribbean Petroleum Corporation and Mr. Norberto Sepulveda, Manager of Planning and Economy of CPC.

### **Caribbean Petroleum Corporation and the Market of Puerto Rico**

Caribbean Petroleum Corporation (CPC) has been doing business in Puerto Rico since September 1987, when it purchased the service stations and the Refinery located on Highway # 28 Km. 2.0 in Bayamón from Chevron Gulf. Caribbean Petroleum Corporation has been for many years one of the main suppliers of oil products for the consumers through our chain of 250 service stations and also through other wholesale companies, independent companies, direct sales to the government and other Private Companies.



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Hon. Antonio Silva  
 Page 2  
 August 15, 2000

Chamber Resolution 7008

The gasoline used in Puerto Rico does not require the use of MTBE. In the events where it is used, it is used only in order to increase the octane rating of the mix of components used in the production of gasoline. The maximum level permitted in the manufacture of gasoline is 15% by volume and its presence is more typical in high octane rating gasoline (Premium).

Concerning the Industry in general, the use of MTBE has increased since 1998, as it was used to control vehicle emissions. CPC does not produce MTBE, but has imported it to use it together with the other components produced in our refinery to manufacture finished gasoline for the Puerto Rican market.

The following table shows the average content of MTBE in percentage (%) by volume of gasoline produced in our refinery:

| <i>YEAR</i> | <i>MTBE CONTENT (% Vol.)</i> |
|-------------|------------------------------|
| 1990        | 4.89                         |
| 1991        | 5.30                         |
| 1992        | 2.10                         |
| 1993        | 0.00                         |
| 1994        | 0.00                         |
| 1995        | 0.00                         |
| 1996        | 0.00                         |
| 1997        | 0.00                         |
| 1998        | 0.00                         |
| 1999        | 0.00                         |
| 2000        | 0.43 <sup>*1</sup>           |

<sup>\*1</sup> Represents the value in June 2000

Hon. Antonio Silva  
Page 3  
August 15, 2000

CPC imports gasoline from all the parts of the World, which may contain MTBE with a maximum concentration of 15% by volume. The reality is that, during 1998 and 1999, the average concentration of MTBE in the gasoline imported by CPC was 1.02% by volume.  
Please refer to the following table:

| <i>YEAR</i> | <i>MTBE CONTENT (% Vol.)</i> |
|-------------|------------------------------|
| 1998        | 1.02                         |
| 1999        | 0.61                         |

Currently, there is no clear and precise scientific evidence demonstrating that MTBE causes cancer in humans, even though there are statistics that indicate that MTBE may cause cancer in animals, only when administered daily in high doses during the life of the animal.

Consequently, we understand that this Honorable Commission must continue to follow-up on the various studies carried out in the United States and elsewhere in the World, before making a decision concerning the use of MTBE.

In the specific case of CPC, we understand that after eliminating the use of lead in the production of gasoline, MTBE is the most suitable component to complement the production of gasoline in our Refinery at a time when there is no option to import high octane rating gasoline. In addition, if we eliminated the use of MTBE, the present viable alternatives would be to increase the content of aromatic compounds (BTX) in the gasoline pool. However, everybody knows that aromatic compounds are highly dangerous since, contrary to MTBE, it is known that these components cause cancer in humans.

Sincerely,  
[signature]  
Eric Guzmán  
Marketing Manager

cbr

PR-LEG-0000055



**CERTIFICATION OF DOCUMENTS FOUND IN THE FILE:**

In the capacity of custodian of the files of the Legislative Assembly of Puerto Rico, I certify that we have diligently reviewed the file of the Chamber Resolution 7008, (hereinafter Chamber Resolution 7008) found in our archives and we delivered a true and exact copy of all documents that are part of the file to Atty. Jorge A. Sagardía, including:

- 1) Copy of the Text of Final Approval of Chamber Resolution 7008 dated June 30, 2000. (2 pages)
- 2) Report on Chamber Resolution 7008 by the Internal Affairs Commission of the Chamber dated June 29, 2000, signed by Augusto Sánchez Fuentes (Interim President — Internal Affairs Commission). (2 pages)
- 3) Report on Chamber Resolution 7008 by the Socioeconomic Development, Planning and Natural Resources Commission of the Chamber dated November 29, 2000, signed by Antonio Silva Delgado (President — Socioeconomic Development and Planning Commission) and Jorge Acevedo Méndez (President — Natural Resources Commission). (4 pages)
- 4) Presentation of The Shell Company (Puerto Rico) Limited dated August 15, 2000, signed by Juan I. Vázquez (Country Chairman). (3 pages)
- 5) Presentation of Caribbean Petroleum Limited Partnership dated August 15, 2000, signed by Eric Guzmán (Marketing Manager). (3 pages)
- 6) Presentation of the Gasoline Retailers Association of Puerto Rico, Inc. dated August 17, 2000. (5 pages)
- 7) Presentation of the Department of Health dated September 11, 2000, signed by Carmen Feliciano de Melecio, M.D. (Secretary of Health). (2 pages)
- 8) Presentation of the Department of Consumer Affairs dated September 14, 2000, signed by Jose M. Cintrón (Undersecretary). (2 pages)
- 9) Presentation of Esso Standard Oil Co. (Puerto Rico) dated September 20, 2000, signed by Jorge Concha (President). (3 pages)
- 10) Presentation of Texaco Puerto Rico Inc. dated September 20, 2000, signed by Cándido Rivera (Marketing Manager). (3 pages)
- 11) Presentation of the Environmental Quality Board signed by Atty. Héctor Russe Martínez (President). (4 pages)

The file consists of various documents – with a combined total number of 33 pages.

ISSUED today, October \_\_, 2010, in San Juan, Puerto Rico.

[stamp:]  
OCT. 13, 2010 9:15 AM  
[stamp:]  
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PR-LEG-0000082



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## CERTIFIED TRANSLATION

## Documents Translated For:

|                                   |  |
|-----------------------------------|--|
| Name: John Dema, Esq.             | Street Address: 1236 Strand Street                     |
| Firm: Law Offices of John K. Dema | City/State/Zip: Christiansted / Virgin Islands / 00820 |

## Description of Document(s):

|   |
|---|
| LETTER TRANSLATION (SEPTEMBER 20, 2000)                   |
|   |
|   |
| XOM-PR-FILES-SUPP-473224 through XOM-PR-FILES-SUPP-473226 |
|   |

|                          |                          |
|--------------------------|--------------------------|
| Source Language: SPANISH | Target Language: ENGLISH |
|--------------------------|--------------------------|

WITH REFERENCE TO THE ABOVE MENTIONED MATERIALS/DOCUMENTS, we at Language Fish LLC (doing business as [www.certifiedtranslate.com](http://www.certifiedtranslate.com)), a professional document translation company, attest that the language translation completed by Language Fish's certified professional translators, represents, to the best of our judgment, an accurate and correct interpretation of the terminology/content of the source document(s). This is to certify the correctness of the translation only. We do not guarantee that the original is a genuine document or that the statements contained in the original document(s) are true.

IN WITNESS WHEREOF, Language Fish LLC has caused the Certificate to be signed by its duly authorized officer(s).

By: Sean Kirschenstein, Director

Date: December 3, 2013

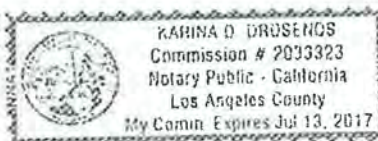
A copy of the translated version(s) is attached to this statement of certification.

 State of California  
 County of Los Angeles

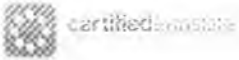
On Dec 3, 2013 before me, Karina Droseus, Notary Public, appeared Sean Kirschenstein, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature


 EXHIBIT NO: 6  
 WITNESS: CONCHA  
 DATE: 12-4-13  
 Dorothy Linda Minor, RPR





Esso Standard Oil Co. (Puerto Rico)  
PO Box 364269  
San Juan PR 00936-4269  
(787) 792-2920 Telephone  
(787) 793-6555 Fax



September 20, 2000

Honorable Antonio Silva Delgado  
President  
Socioeconomic Development and Planning Commission  
Puerto Rico House of Representatives  
San Juan, Puerto Rico 00901

Re: House Resolution 7008

Honorable Mr. President and Members of the Commission:

Esso Standard Oil Co. (Puerto Rico) thanks the Honorable Commission for the opportunity to be able to offer our comments on House Resolution 7008, regarding the presence of MTBE in gasoline and the existing alternatives. ESSO respectfully submits the following comments:

ESSO supplies gasoline to retail customers in Puerto Rico through the service stations that operate under the Esso brand. The gasoline we sell is not manufactured by ESSO, but rather is imported under a contract with a refiner in the region, or is obtained through exchange with a local producer. ESSO then adds its exclusive additive to the product, resulting in the gasoline that is sold at ESSO stations.

According to our records, the gasoline that is supplied to us contains low levels of Methyl Tertiary Butyl Ether, or MTBE. During the first seven months of this year (2000), the levels of this product have varied between 0 and 0.5 percent of MTBE by volume.

XOM-PR-FILES-SUPP-473224





certified post

Hon. Antonio Silva Delgado

-2-

September 20, 2000

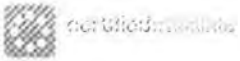
It bears mentioning that the Federal Environmental Protection Agency (EPA) approves the use of MTBE in gasoline. This approval is based on a wide range of scientific and health studies.

In fact, in 1999 the EPA's Blue Ribbon Panel on Oxygenates in Gasoline did not recommend that this product (MTBE) be eliminated completely from gasoline. The panel observed that, as MTBE is being used in gasoline, it does not pose a danger or risk to the public. In areas of the United States where reformulated gasoline (RFG) is required, the panel recommended that the federal requirement on oxygenates be eliminated, which in regard to MTBE represents concentrations no less than 11 percent by volume.

In areas of the United States where use of reformulated gasoline is required, concerns have arisen regarding MTBE in underground water. The United States Congress and the Federal Environmental Protection Agency (EPA) are currently working on this matter. It is worth noting that the use of reformulated gasoline, or RFG, is not required in Puerto Rico. As was already mentioned, ~~the levels of MTBE in the gasoline that is supplied to us tend to be substantially lower than the levels in reformulated gasoline.~~

ESSO is aware of the interest that this Honorable Commission has in MTBE. In addition, we are aware of the concern voiced in some states of the United States in regard to this subject. We want this Honorable Commission to know that we are seriously concerned about the handling of our products. Toward that end, we are working to minimize any leaks from the underground storage tank systems at our stations. ESSO's policy is to comply fully with the environmental laws and local regulations that apply to these tank systems. ESSO supports the strict observation of these regulations, and it is our policy not to deliver gasoline in underground tanks that we know do not comply with these regulations. Furthermore, companies affiliated with ESSO actively follow up and participate in scientific studies on pollution prevention and cleaning methods that are being conducted by various government and industry organizations.

XOM-PR-FILES-SUPP-473225



Hon. Antonio Silva Delgado

-3-

September 20, 2000

Once again, on behalf of Esso Standard Oil Co. (Puerto Rico), I thank you for the opportunity to address you today. I will be glad to answer any questions you may have.

Sincerely,

[Signature]

Jorge Concha

President

XOM-PR-FILES-SUPP-473226

**Esso Standard Oil Co. (Puerto Rico)**  
PO Box 364269  
San Juan PR 00936-4269  
(787) 792-2920 Telephone  
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20 de Septiembre de 2000

Honorable Antonio Silva Delgado  
Presidente  
Comisión de Desarrollo Socioeconómico y Planificación  
Cámara de Representantes de Puerto Rico  
San Juan, Puerto Rico 00901

Re: R. de la C. 7008

Honorable Sr. Presidente y miembros de la Comisión:

Esso Standard Oil Co. (Puerto Rico) agradece a la Honorable Comisión la oportunidad de poder presentar nuestros comentarios a la R. de la C. 7008, en relación con la presencia de MTBE en la gasolina y las alternativas que hay. ESSO respetuosamente somete los siguientes comentarios:

ESSO suple gasolina a clientes al detal en Puerto Rico a través de la red de estaciones de servicio que operan bajo la marca Esso. La gasolina que vendemos no es fabricada por ESSO, más bien se importa bajo contrato con algún refinador en la región, o se obtiene mediante intercambio con algún productor local. ESSO entonces añade su aditivo exclusivo al producto resultando en la gasolina que se vende en estaciones ESSO.

De acuerdo a nuestros registros, la gasolina que se nos suple contiene niveles bajos de Methyl Tertiary Butyl Ether, o MTBE. Durante los primeros siete meses de este año 2000, los niveles de este producto han variado entre 0 y 0.5 por ciento de MTBE por volumen.



Hon. Antonio Silva Delgado

-2-

20 de Septiembre de 2000

Cabe señalar que la Agencia Federal de Protección Ambiental (EPA, por sus siglas en ingles) aprueba el uso de MTBE en la gasolina. Esta aprobación se basa en una amplia gama de estudios científicos y de salud.

De hecho, en 1999 el Panel Cinta Azul de EPA sobre Oxigenados en la Gasolina ("Blue Ribbon Panel") no recomendó que se eliminara por completo este producto (MTBE) de la gasolina. El panel observó que tal como se usa MTBE en la gasolina no ofrece peligro o riesgo para el público. En áreas de los Estados Unidos en que se requiere gasolina reformulada (RFG, por sus siglas en ingles), el panel recomendó se eliminara el requisito federal de oxigenados, que en cuanto a MTBE representa concentraciones no menores de 11 por ciento por volumen.

En áreas de los Estados Unidos donde se requiere el uso de gasolina reformulada han surgido preocupaciones en relación a MTBE en aguas subterráneas. Actualmente el Congreso de los Estados Unidos y la Agencia Federal de Protección Ambiental (EPA) están trabajando en este asunto. Cabe señalar que el uso de la gasolina reformulada, o RFG, no es requerida en Puerto Rico. Según ya mencionado los niveles de MTBE en la gasolina que se nos supe tienden a ser sustancialmente más bajos que los niveles en gasolina reformulada.

ESSO está consciente del interés que esta Honorable Comisión tiene en MTBE. Además estamos conscientes de la preocupación expresada en algunos estados de los Estados Unidos con relación a este tema. Queremos que esta Honorable Comisión sepa que nos preocupamos seriamente por el manejo de nuestros productos. A esos efectos, trabajamos para minimizar cualquier escape de los sistemas de tanques soterrados en nuestras estaciones. La política de ESSO es cumplir a cabalidad con las leyes ambientales y las reglamentaciones locales que aplican a dichos sistemas de tanques. ESSO apoya la observación estricta de estos reglamentos y es nuestra política no entregar gasolina en tanques soterrados que sabemos no cumplen con estas regulaciones. Además, compañías afiliadas a ESSO dan seguimiento activo y participan en estudios científicos de prevención de contaminación y métodos de limpieza que están siendo conducidos por distintas organizaciones de gobierno e industria.

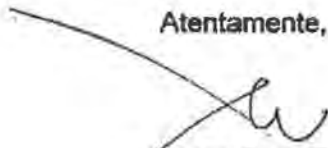
Hon. Antonio Silva Delgado .

-3-

20 de Septiembre de 2000

Nuevamente, en nombre de Esso Standard Oil Co. (Puerto Rico) les agradezco la oportunidad de dirigirme a ustedes el día de hoy. Estoy en la mejor disposición de contestar cualquier pregunta que puedan tener.

Atentamente,



Jorge Goncha  
Presidente

## **Exhibit 9**

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3 --o0o--

4 SOUTH TAHOE PUBLIC UTILITY )  
DISTRICT, )

5 )  
6 Plaintiff, )

7 vs )

No. 999128

THIS TRANSCRIPT CONTAINS  
CONFIDENTIAL MATERIALS

ATLANTIC RICHFIELD COMPANY )

8 ("ARCO"); ARCO CHEMICAL COMPANY; )

SHELL OIL COMPANY; CHEVRON )

9 U.S.A., INC.; EXXON CORPORATION; )

10 B.P. AMERICA, INC.; TOSCO )

CORPORATION; ULTRAMAR, INC.; )

11 BEACON OIL CO.; USA GASOLINE )

CORPORATION; SHELL OIL PRODUCTS )

12 CO.; TERRIBLE HERBST, INC.; )

ROTTEN ROBBIE; J.E. TVETEN )

CORP.; TAHOE TOM'S GAS STATION; )

13 THE SOUTHLAND CORP.; PARADISE )

CHEVRON; and DOES 1 through 600, )

14 inclusive, )

15 Defendants. )

16 --o0o--

17 THURSDAY, JANUARY 13, 2000

18 10:07 A.M.

19 --o0o--

20 DEPOSITION OF  
BARBARA MICKELSON

21 --o0o--

22  
23  
24 CATHLEEN SLOCUM, CSR  
License No. 2822

|   |  |
|---|--|
| <p style="text-align: right;">Page 64</p> <p>1 responsibility for maintaining the tank systems.</p> <p>2 Q Okay. Did you make that statement based on discussions</p> <p>3 with other people employed by Exxon at the time, that is,</p> <p>4 that if MTBE were added to Exxon gas there was going to be a</p> <p>5 detailed risk assessment to determine where additional</p> <p>6 monitoring in the form of monitoring wells should occur?</p> <p>7 A I would, I would think that I had discussions with</p> <p>8 Mr. Decker and Mr. Eaton.</p> <p>9 Q Okay. You wouldn't make a statement like that on your</p> <p>10 own?</p> <p>11 A Well, I think that it would be something that I would</p> <p>12 review with my supervisor, the department. It's something</p> <p>13 that I don't think that I would sign off and copy them</p> <p>14 without making sure that they knew I was going to say that.</p> <p>15 Q Okay. So at least as you understood it, it was your</p> <p>16 group's decision that if Exxon went ahead with the use of</p> <p>17 MTBE, you would be recommending a detailed risk assessment</p> <p>18 with monitoring?</p> <p>19 A That's how I read this memo.</p> <p>20 Q Okay. And the monitoring would be to install</p> <p>21 monitoring wells that could check the condition of</p> <p>22 groundwater right near the service station and thereby let</p> <p>23 you know if you were having a problem quickly?</p> <p>24 A That was one of the techniques in these monitoring</p> <p>25 programs. Other things that were done were the inventory</p> | <p style="text-align: right;">Page 66</p> <p>1 drive you to deal with the older tank first.</p> <p>2 Q Because corrosion or other factors associated with age</p> <p>3 might cause that one to leak with a greater frequency?</p> <p>4 A Again, if there were no other factors involved, I would</p> <p>5 say that then you only would make your decision based on</p> <p>6 age. I would look at the older tanks.</p> <p>7 Q Okay. And this letter was sent to Mr. Mixer. Was he</p> <p>8 head of the marketing department at the time?</p> <p>9 A I don't know what his title was at the time.</p> <p>10 Q It was sent to Mr. Eaton who was your boss?</p> <p>11 A At that time I worked directly for Art Decker who</p> <p>12 worked for Mr. Eaton.</p> <p>13 Q I see. Mr. Eaton had been promoted?</p> <p>14 A No. I think that Mr. Decker was brought in to --</p> <p>15 Mr. Eaton was in the same job, but Mr. Decker was brought in</p> <p>16 to coordinate the environmental activities.</p> <p>17 Q <u>Okay. If we could turn to Exhibit 8, we now have a</u></p> <p>18 <u>third memo again signed by yourself, again addressed to Mr.</u></p> <p>19 <u>Mixer. Dated just what, about two months later than the</u></p> <p>20 <u>memo we just went over, namely, April 19, 1985; is that</u></p> <p>21 <u>correct?</u></p> <p>22 A <u>That's correct.</u></p> <p>23 Q <u>So this would be your third memo on MTBE and its</u></p> <p>24 <u>potential for causing groundwater contamination problems in</u></p> <p>25 <u>less than a year?</u></p>                              |
| <p style="text-align: right;">Page 65</p> <p>1 control and tank testing.</p> <p>2 Q So you'd be doing more for gasoline that contained MTBE</p> <p>3 than you were doing before you had gasoline that contained</p> <p>4 MTBE?</p> <p>5 A I think that all those things were done routinely for</p> <p>6 the gasoline. I don't want to suggest that there wasn't a</p> <p>7 concern about gasoline not containing MTBE, but my</p> <p>8 recommendation was to be more aggressive or to look at the</p> <p>9 need for monitoring more, more directly or more thoroughly</p> <p>10 because MTBE increased some risks that I had identified</p> <p>11 previously.</p> <p>12 Q Okay. Now, this detailed risk assessment that you</p> <p>13 referred to would have been used to try to identify sites</p> <p>14 that might be more sensitive than others to contamination</p> <p>15 problems so that you could invest your money in the</p> <p>16 monitoring where the greatest risk was, was that the idea?</p> <p>17 A Well, I think it, the idea was to look at things like</p> <p>18 the soil conditions, the tank age, other things to determine</p> <p>19 which ones would, you know, may need to be addressed sooner</p> <p>20 than others. So it's a combination of the soil, equipment</p> <p>21 and where you were located, things like that.</p> <p>22 Q Okay. So the older the tank, would that tend to</p> <p>23 indicate the greater the need assuming the soil conditions</p> <p>24 were the same?</p> <p>25 A I think that if everything were the same, age would</p>  | <p style="text-align: right;">Page 67</p> <p>1 A <u>That would be correct.</u></p> <p>2 Q Were you writing these memos because you were being</p> <p>3 asked more and more questions or because you had new</p> <p>4 information? Why did you keep writing? Could you explain</p> <p>5 that?</p> <p>6 A <u>I think the first memo was a general question, you</u></p> <p>7 <u>know, what if we put MTBE in our gas. The second one was</u></p> <p>8 <u>more focused, what if we put MTBE in the particular Texas</u></p> <p>9 <u>pipeline situation. And this third one, again, it's the</u></p> <p>10 <u>Texas transmission, but it looks like they've added some</u></p> <p>11 <u>other locations. They've added Florida, South Carolina and</u></p> <p>12 <u>North Carolina. So I think each time they wanted to get</u></p> <p>13 <u>another check on, okay, if we do this, what do you say?</u></p> <p>14 <u>Okay, what if we just do a smaller thing, what do you say?</u></p> <p>15 <u>Okay. Now, we've got a slight change. So they just keep</u></p> <p>16 <u>coming back and making sure that they get our input on each</u></p> <p>17 <u>choice that they're evaluating.</u></p> <p>18 Q Okay. It certainly wasn't because they didn't</p> <p>19 understand what your concerns were that they kept coming</p> <p>20 back to you?</p> <p>21 A No, I think they understood what my concerns were.</p> <p>22 Q And it wasn't because they disagreed with what you were</p> <p>23 saying?</p> <p>24 A I had not heard that they disagreed with what I was</p> <p>25 saying.</p> |



Page 68

1 Q It was because they wanted to look at a different  
 2 scenario?  
 3 A That's -- my thought is there's a system of getting  
 4 input and if they went to management and said here's our  
 5 proposal, management would say, what did marketing  
 6 environmental say about that? They said, well, we didn't  
 7 ask them. That wouldn't work within Exxon. So they had to  
 8 come back and get the input.  
 9 Q I see. So this third one, Exhibit 8, is an attempt to  
 10 look at the use of MTBE in the Texas Eastern Transmission  
 11 area that would include sending gasoline to Jacksonville,  
 12 Florida, Charleston, South Carolina, and Wilmington, North  
 13 Carolina areas which I assume includes some outlying  
 14 communities. Was that your understanding?  
 15 A As I'm looking at it today I'm not sure whether the  
 16 Texas Eastern Transmission serviced those additional areas  
 17 or if they were going to get -- I'm not sure if those are  
 18 four different locales with different service or if the  
 19 Texas Eastern encompasses that.  
 20 Q Okay.  
 21 A I'm not sure.  
 22 Q But what you do recall is this memo was designed to  
 23 discuss the potential impact of having MTBE in gas not just  
 24 in the Texas pipeline but also in Florida, South Carolina  
 25 and North Carolina?

Page 69

1 A That's, my read of it today as I'm looking at it is we  
 2 had the question about the Texas Eastern and this is  
 3 additional areas.  
 4 MR. MILLER: Okay. We're going to have to go off  
 5 the video record for just a minute.  
 6 THE VIDEOGRAPHER: Going off record at 11:55.  
 7 (Thereupon a brief recess was taken.)  
 8 THE VIDEOGRAPHER: Back on record 11:56.  
 9 MR. MILLER: Q I'd like to review your April 19,  
 10 1985 memo briefly. First thing you do in the memo is you  
 11 give four reasons why there is an environmental risk of  
 12 using MTBE. You do them as bullet points; is that correct?  
 13 A That's correct.  
 14 Q And like your prior memos you point out that MTBE has  
 15 higher solubility, correct?  
 16 A That's correct.  
 17 Q It has special taste and odor, correct?  
 18 A That's correct.  
 19 Q It has a higher differential transportation rate which  
 20 is language you use to say it's more mobile than some of the  
 21 other components of gasoline?  
 22 A I use because it, again, when you look at how it  
 23 functions and where it goes, it travels differently and  
 24 isn't adsorbed by the soils. So it goes with the water in a  
 25 different way than others do.

Page 70

1 Q Okay. So it's not because you don't want to refer to  
 2 that other oil company, Mobil, it's because --  
 3 A To me it just, it doesn't, it isn't as accurate.  
 4 Q Okay.  
 5 A I wouldn't -- I'm sure I've used that in conversation,  
 6 but it can't move faster than water. It moves with the  
 7 water. It moves through the environment just like the other  
 8 constituents, but it doesn't get adsorbed. It has this  
 9 chromatographic effect that we were seeing. So it could  
 10 move out beyond the benzene, for instance, and get further  
 11 away from the source.  
 12 Q Basically MTBE goes where the water goes, it doesn't  
 13 stick to the soil?  
 14 A Basically that's what happens. It doesn't like soil as  
 15 much as some of the other constituents do.  
 16 Q Okay. And then the fourth bullet point is MTBE cannot  
 17 be removed below detectable levels by carbon adsorption and,  
 18 therefore, must be treated by more complicated and expensive  
 19 air stripping columns, correct?  
 20 A What I think I said earlier, it can be removed by  
 21 carbon adsorption and different, you know, carbon has  
 22 developed a lot since the time I wrote this memo in terms of  
 23 things. So I wouldn't have written it the same way today,  
 24 but at that time with my experience on carbon that's what I  
 25 thought.

Page 71

1 Q It's your understanding we've got some new and improved  
 2 carbon these days; is that correct?  
 3 A I believe we have some new and improved carbon.  
 4 Q All right. They actually make carbon different ways  
 5 depending upon what chemical you're trying to filter out.  
 6 Is that your understanding?  
 7 A There are some, there are some, you know, polymer  
 8 enhanced carbons that go in one direction and a whole  
 9 variety of carbons. So you can get special carbons for  
 10 different chemicals in a way that we didn't have as much  
 11 information about in 19 -- you know, they just -- it wasn't  
 12 as big an industry in 1985. So I just -- I would not say  
 13 today that you can't remove it from solution to below  
 14 detectable levels.  
 15 Q Okay.  
 16 A That, I just wanted to clarify that that was what my  
 17 position was based on my understanding and experience in  
 18 1985.  
 19 Q Okay. Now, apparently because of the trend in coming  
 20 back to you for requests, even though you were responding  
 21 for a two-way request for information on Texas, Florida and  
 22 the Carolinas, you even, you went further and mentioned the  
 23 US as a whole? If you look at --  
 24 A Well, I believe I read this a little, while we were  
 25 taking a break I looked at the letter again. And I see that

|  |  |
|--|--|
| <p style="text-align: right;">Page 72</p> <p>1 we talk about the Texas Pipeline System and the Texas<br/> 2 Eastern Transmission System are not the same thing. They're<br/> 3 different things.<br/> 4 Q Okay.<br/> 5 A In our earlier conversation I was looking at Texas<br/> 6 Eastern and thinking it was the pipeline, but they're two<br/> 7 different things. So this is a, this isn't the same request<br/> 8 with a different, like some add-on, this is a completely new<br/> 9 request.<br/> 10 Q Okay. I guess my point is if you look at your four<br/> 11 bullets and the paragraph immediately below, after going<br/> 12 over those four points you state, "As a result we recommend<br/> 13 that from an environmental risk point of view MTBE not be<br/> 14 considered as an additive to Exxon gasolines on a blanket<br/> 15 basis throughout the United States."<br/> 16 A That was the conclusion.<br/> 17 Q And you use the term "we" not in the royal sense but to<br/> 18 discuss what you and your colleagues agreed upon; is that<br/> 19 correct?<br/> 20 A I think that we were talking about real estate and<br/> 21 engineering. I think at this, I'm looking at the cc list,<br/> 22 and now we've added W.E. Gattis who was Mr. Eaton's<br/> 23 supervisor. So, again, I'm making a recommendation based on<br/> 24 review, but the recommendation is really being submitted by<br/> 25 real estate and engineering services, the group that did the</p> | <p style="text-align: right;">Page 74</p> <p>1 Q So certainly this memo couldn't be read as a<br/> 2 recommendation to use MTBE in gasoline in California?<br/> 3 A No. It wasn't addressing California.<br/> 4 Q California is a little different than Texas now that<br/> 5 you've been out here, not just the climate, not just the<br/> 6 humidity, not just the number of folks in the oil business,<br/> 7 but for some other reasons relating to your field,<br/> 8 hydrogeology?<br/> 9 A I would say that's true.<br/> 10 Q Okay. There are quite a few public drinking water<br/> 11 systems here in California that rely on groundwater. Is<br/> 12 that your understanding?<br/> 13 A Yes.<br/> 14 Q And there have been some contamination problems in some<br/> 15 of those wells associated with activities by us folks<br/> 16 walking around on the surface, correct?<br/> 17 A I'm not sure I understand that question that way.<br/> 18 Q Substances introduced at the surface are finding their<br/> 19 way to California wells, public drinking water wells. Is<br/> 20 that your understanding?<br/> 21 A I believe that's true.<br/> 22 Q Okay. You again reference the Texas Pipeline System<br/> 23 and the factors that lead you to conclude that it would be<br/> 24 okay. What you state is, after discussing the Texas<br/> 25 Pipeline System, you state, "Therefore, we saw no overriding</p> |
| <p style="text-align: right;">Page 73</p> <p>1 environmental work for marketing.<br/> 2 Q So this is a report by a group of people employed by<br/> 3 Exxon who have expertise in environmental contamination<br/> 4 incidents to somebody whose three levels above where you are<br/> 5 in the chain of command in Exxon?<br/> 6 A I don't know exactly where Mr. Mixter fits. He may<br/> 7 have been at Mr. Gattis' level. He may have been at<br/> 8 Mr. Eaton's level.<br/> 9 Q Okay.<br/> 10 A He may have been at Mr. Decker's level. I just don't<br/> 11 know.<br/> 12 Q But certainly it was going to people higher up in the<br/> 13 company?<br/> 14 A Yes.<br/> 15 Q The purpose of this was to give information to<br/> 16 management so that a good decision could be made?<br/> 17 A I believe that's correct.<br/> 18 Q Okay. You go on to state after your group made the<br/> 19 recommendation that it not be used on a blanket basis<br/> 20 throughout the United States, that, quote, "... on an<br/> 21 area-by-area basis the risks to the environment differ."<br/> 22 A Right.<br/> 23 Q And that was your opinion at the time; is that<br/> 24 correct?<br/> 25 A That's correct.</p>  | <p style="text-align: right;">Page 75</p> <p>1 reason to and did not recommend against the addition of MTBE<br/> 2 in the Texas Pipeline System," correct?<br/> 3 A That's correct.<br/> 4 Q Is that different than saying I recommend that you use<br/> 5 it?<br/> 6 A I don't think it -- it wasn't my position to recommend<br/> 7 that they use it. There would be other reasons to use it.<br/> 8 But here I didn't, as a result of the risks that we saw in<br/> 9 that particular distribution area, we didn't recommend<br/> 10 against it.<br/> 11 Q Okay. You then state in the next paragraph, "The<br/> 12 mitigating factors which reduce the risks associated with<br/> 13 the addition of MTBE in the Texas Pipeline System do not<br/> 14 exist in other areas of the country where we market,"<br/> 15 correct?<br/> 16 A That was my understanding of where we market and what<br/> 17 the characteristics were.<br/> 18 Q Okay. You go on to state, "From an environmental risk<br/> 19 point of view we recommend against introducing MTBE into the<br/> 20 Texas Eastern Transmission System and the Southeast Atlantic<br/> 21 Coast"?<br/> 22 A That's correct.<br/> 23 Q Now, that would have included the state of North<br/> 24 Carolina?<br/> 25 A Well, at least the Wilmington area.</p>  |

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO

SOUTH TAHOE PUBLIC UTILITY  
DISTRICT,  
Plaintiff

VS. NO. 999128

ATLANTIC RICHFIELD COMPANY ("ARCO");  
ARCO CHEMICAL COMPANY; SHELL OIL  
COMPANY; CHEVRON U.S.A., INC.;  
EXXON CORPORATION; B.P. AMERICA,  
INC.; TOSCO CORPORATION; ULTRAMAR,  
INC.; BEACON OIL CO.; USA  
GASOLINE CORPORATION; et al.,  
Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO

COMMUNITIES FOR A BETTER  
ENVIRONMENT, a California  
Non-Profit Corporation, on behalf  
of the General Public,

Plaintiff

VS. CIVIL NO. 997013

UNOCAL CORPORATION,  
a Delaware Corporation, et al

Defendants

ORAL DEPOSITION OF  
DALE YOUNG  
April 26, 2000

ORAL DEPOSITION OF DALE YOUNG, produced as a witness  
at the instance of the plaintiff, was taken in the above  
styled and numbered cause on April 26, 2000, from 10:23  
a.m. to 4:24 p.m., before Kay Howell, Certified Shorthand  
Reporter in and for the State of Texas, reported by  
machine shorthand, at the Doubletree Hotel, 400 Dallas  
Street, Houston, Texas, 77002.

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1 Q. Then there is a commercial MTBE product. Is that  
2 correct?

3 A. I've not heard it referred to as commercial MTBE.

4 Q. What term is used for the type of product that is  
5 sold to your customers who are refineriess?

6 A. MTBE.

7 Q. And is that product neat MTBE, or does it have a  
8 lesser concentration of MTBE in the product?

9 A. That would be product that is as we produced.

10 Which, again, I would apply personally the term neat to  
11 that, meaning it's unblended at that point.

12 Q. Is it your understanding that a chemical is  
13 present in the product that you sell as MTBE which is  
14 called TBA?

15 A. The acronym is TBA. Yes, I am aware of that.

16 Q. Is it possible to produce an MTBE product in the  
17 real world that doesn't contain TBA?

18 A. Practically speaking, I would say yes.

19 Q. Okay. Why is it that TBA is included as an  
20 ingredient in the MTBE products that you sell to  
21 refineriess?

22 A. The process for which we make MTBE starts with a  
23 product -- with the TBA or tertiary butyl alcohol. You  
24 process that downstream ultimately to MTBE. As you go  
25 through the processing steps, you will typically get some

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1 material that remain unreacted. And therefore you'll  
2 have some level of that product in the final product, in  
3 this case TBA in MTBE.

4 Q. So basically you're starting with a group of  
5 chemicals in the process of manufacturing MTBE that  
6 includes TBA in terms of the way Arco does it, is that  
7 correct?

8 A. Generally speaking, yes.

9 Q. And then for various reasons some portion of that  
10 TBA isn't chemically changed during the process so it  
11 ends up in the final product?

12 A. That is correct.

13 Q. Now, is that true to your understanding during  
14 the time Arco Chemical Company was making MTBE?

15 A. Yes.

16 Q. And is that still true today?

17 A. Yes.

18 Q. Can you tell me approximately what portion of the  
19 product contains TBA?

20 A. I personally cannot tell you in that that's a  
21 detail that I wouldn't be directly involved in.

22 Q. Can you identify the person you would ask to get  
23 the answer to that question?

24 A. I would ask my marketing manager for that  
25 information.

|        |    |  |        |    |                                       |
|--------|----|--|--------|----|---------------------------------------|
|        |    | Page 1   |        |    | Page 3                                |
| 1      | 1  | SUPERIOR COURT OF THE STATE OF CALIFORNIA<br>FOR THE COUNTY OF SAN FRANCISCO | 1      | 1  | Tahoe Public Utility District         |
| 2      | 2  | COMMUNITIES FOR A BETTER :<br>ENVIRONMENT, a California :                    | 2      | 2  | JONATHAN JENKINS, ESQUIRE             |
| 3      | 3  | Non-Profit Corporation, :  | 2      | 3  | Latham & Watkins                      |
| 4      | 4  | On Behalf of the General :   | 3      | 3  | 633 West Fifth Street                 |
| 4      | 4  | Public, :  | 4      | 4  | Suite 4000                            |
| 5      | 5  | Plaintiff : CIVIL ACTION NO.   | 4      | 4  | Los Angeles, California 90071-2007    |
| 5      | 5  | vs. : 997013   | 5      | 5  | (213) 485-1234                        |
| 6      | 6  | UNOCAL CORPORATION, a :  | 5      | 6  | On behalf of the Defendant            |
| 6      | 6  | Delaware corporation, :  | 6      | 6  | Tosco Corporation                     |
| 7      | 7  | et al., :  | 6      | 7  | KENNETH L. WAGGONER, ESQUIRE          |
| 7      | 7  | Defendants :   | 7      | 7  | Brobeck Phleger & Harrison LLP        |
| 8      | 8  | SUPERIOR COURT OF THE STATE OF CALIFORNIA<br>FOR THE COUNTY OF SAN FRANCISCO | 7      | 8  | 550 South Hope Street                 |
| 9      | 9  | SOUTH TAHOE PUBLIC :<br>UTILITY DISTRICT :                                   | 8      | 8  | Los Angeles, California 90071-2604    |
| 10     | 10 | Plaintiff : CASE NO.   | 8      | 9  | (213) 489-4060                        |
| 11     | 11 | vs. : 999128   | 9      | 9  | On behalf of the Defendants           |
| 11     | 11 | ATLANTIC RICHFIELD COMPANY:<br>("ARCO"); ARCO CHEMICAL :                     | 10     | 10 | B.P. America, Unocal Corporation      |
| 12     | 12 | COMPANY; SHELL OIL :<br>COMPANY; CHEVRON U.S.A., :                           | 10     | 11 | and Union Oil Company of              |
| 13     | 13 | INC.; EXXON CORPORATION; :<br>B.P. AMERICA, INC.; TOSCO :                    | 11     | 11 | California                            |
| 14     | 14 | CORPORATION; ULTRAMAR, :<br>INC.; BEACON OIL CO.; USA :                      | 11     | 12 | JEFFREY S. BROMME, ESQUIRE            |
| 15     | 15 | GASOLINE CORPORATION; :<br>SHELL OIL PRODUCTS CO.; :                         | 12     | 12 | MARK W. STOUTENBURG, ESQUIRE          |
| 16     | 16 | TERRIBLE HERBST, INC.; :   | 12     | 13 | Arnold & Porter                       |
| 17     | 17 | ROTTEN ROBBIE; J.E. TVETEN:  | 13     | 13 | 555 Twelfth Street, N.W.              |
| 18     | 18 | CORP.; TAHOE TOM'S GAS :   | 13     | 14 | Washington, D.C. 20004-1206           |
| 19     | 19 | STATION; THE SOUTHLAND :   | 14     | 14 | (202) 942-5999                        |
| 20     | 20 | CORP.; PARADISE CHEVRON; :   | 14     | 15 | On behalf of the Defendant            |
| 21     | 21 | and DOES 1 through 600, :  | 15     | 16 | Atlantic Richfield Company            |
| 22     | 22 | Inclusive, :   | 15     | 16 | ELIZABETH M. WEAVER, ESQUIRE          |
| 23     | 23 | Defendants :   | 16     | 17 | Howrey Simon Arnold & White           |
| 24     | 24 | -----  | 17     | 17 | 550 South Hope Street                 |
| 25     | 25 | 21   | 18     | 18 | Suite 1400                            |
|        |    |  | 19     | 18 | Los Angeles, California 90071-2627    |
|        |    |  | 20     | 19 | (213) 892-1800                        |
|        |    |  | 21     | 19 | On behalf of the Defendant            |
|        |    |  | 22     | 20 | Mobil Oil Corporation                 |
|        |    |  | 23     | 20 | MARYLIN JENKINS MILNER, ESQUIRE       |
|        |    |  | 24     | 21 | Manatt, Phelps & Phillips, LLP        |
|        |    |  | 25     | 21 |                                       |
| Page 2 |    |  | Page 4 |    |                                       |
| 1      | 1  | The videotaped deposition of DAVID J.  | 1      | 1  | Suite 700 Washington, D.C. 20005      |
| 2      | 2  | BOTT, taken on Monday, June 5, 2000 at 10:05                                 | 2      | 2  | (202) 955-0625                        |
| 3      | 3  | a.m., at the Law Offices of Blank Rome Comisky &                             | 2      | 3  | On behalf of the Defendants           |
| 4      | 4  | McCauley, LLP, One Logan Square, 18th and Cherry                             | 3      | 3  | Ultramar, Inc. and USA Petroleum      |
| 5      | 5  | Street, Philadelphia, Pennsylvania before Deborah                            | 3      | 4  | COLLEEN P. DOYLE, ESQUIRE             |
| 6      | 6  | C. D. Shumaker, Notary Public.   | 4      | 4  | McCutchen, Doyle, Brown & Enersen LLP |
| 7      | 7  | -----  | 5      | 5  | 355 South Grand Avenue                |
| 8      | 8  |  | 5      | 5  | Suite 4400                            |
| 9      | 9  | Reported by:   | 6      | 6  | Los Angeles, California 90071         |
| 10     | 10 | Deborah C. D. Shumaker   | 6      | 6  | (213) 680-6446                        |
| 11     | 11 |  | 7      | 7  | On behalf of the Defendants           |
| 12     | 12 | APPEARANCES:   | 7      | 7  | Chevron U.S.A., Inc., Texaco          |
| 13     | 13 | SCOTT SUMMY, ESQUIRE   | 8      | 8  | Refining & Marketing, Inc., Shell     |
| 14     | 14 | Cooper & Scully  | 8      | 8  | Oil Company and Exxon Corporation     |
| 15     | 15 | 900 Jackson Street   | 9      | 9  | ALAN J. HOFFMAN, ESQUIRE              |
| 16     | 16 | Suite 100  | 9      | 10 | Blank Rome Comisky & McCauley, LLP    |
| 17     | 17 | Dallas, Texas 75202  | 10     | 10 | One Logan Square                      |
| 18     | 18 | (214) 712-9506   | 11     | 11 | 18th and Cherry Street                |
| 19     | 19 | On behalf of the Plaintiff   | 12     | 11 | Philadelphia, Pennsylvania 19103-6998 |
| 20     | 20 | Communities For A Better   | 12     | 12 | (215) 568-5505                        |
| 21     | 21 | Environment  | 13     | 12 | On behalf of Lyondell Chemical        |
| 22     | 22 | DUANE C. MILLER, ESQUIRE   | 14     | 13 | Company and the Deponent              |
| 23     | 23 | Miller, Sher & Sawyer  | 15     | 14 | Also present: Joseph Speelman         |
| 24     | 24 | University Park Offices  | 16     | 15 | Ken Nuzzi, Video Operator             |
| 25     | 25 | 100 Howe Avenue  | 17     | 16 |                                       |
|        |    | Suite S120   | 18     | 17 |                                       |
|        |    | Sacramento, California 95825-8218  | 19     | 18 |                                       |
|        |    | (916) 924-8600   | 20     | 19 |                                       |
|        |    |  | 21     | 20 |                                       |
|        |    |  | 22     | 21 |                                       |



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| <p>1 1 A. This was before my time with the</p> <p>2 2 company.</p> <p>3 3 Q. Certainly the document that is marked</p> <p>4 4 Deposition Exhibit Number 6 is a document that is</p> <p>5 5 dated June 4th, 1987.</p> <p>6 6 <u>Would it appear to you that Arco</u></p> <p>7 7 <u>Chemical was using TBA at least beginning in</u></p> <p>8 8 <u>1987?</u></p> <p>9 9 <u>A. It appears to be so, yeah.</u></p> <p>10 10 Q. Was Arco Chemical using TBA to make</p> <p>11 11 isobutylene during the time in which you were in</p> <p>12 12 the division that dealt with MTBE?</p> <p>13 13 A. Yes.</p> <p>14 14 <u>Q. Do you know whether or not your</u></p> <p>15 15 <u>customers, the refiners, when they manufacture</u></p> <p>16 16 <u>MTBE, whether or not they use TBA as part of the</u></p> <p>17 17 <u>isobutylene process?</u></p> <p>18 18 <u>A. They typically do not.</u></p> <p>19 19 <u>Q. Was this something that was particular</u></p> <p>20 20 <u>to a chemical company such as Arco Chemical?</u></p> <p>21 21 <u>A. Yes.</u></p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 1 literature that was given to your customers</p> <p>2 2 related to TBA and the storage and handling of</p> <p>3 3 TBA?</p> <p>4 4 A. I'm sure there was information at some</p> <p>5 5 point.</p> <p>6 6 Q. Are you aware of any warnings or</p> <p>7 7 instructions given by Arco Chemical to your</p> <p>8 8 customers related to TBA?</p> <p>9 9 A. As far as I know, again, it was before</p> <p>10 10 my time, but Arco Chemical sold TBA as a</p> <p>11 11 gasoline-blending component, and my assumption</p> <p>12 12 would be that there was information at that</p> <p>13 13 point.</p> <p>14 14 Q. Are you aware of any literature,</p> <p>15 15 warnings or instructions that Arco Chemical would</p> <p>16 16 have given to its customers relating to TBA when</p> <p>17 17 it sold these customers MTBE?</p> <p>18 18 A. No.</p> <p>19 19 Q. Are you aware of any literature,</p> <p>20 20 warnings or instructions given by Arco Chemical</p> <p>21 21 to owners and operators of gasoline service</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| Page 70  | Page 72  |
| <p>1 1 Q. Certainly to the extent that the</p> <p>2 2 refiners purchased pure MTBE from Arco Chemical,</p> <p>3 3 the isobutylene would contain TBA, correct?</p> <p>4 4 A. I didn't understand the question.</p> <p>5 5 Q. To the extent that your customers</p> <p>6 6 purchased pure MTBE from Arco Chemical, that MTBE</p> <p>7 7 would contain TBA as part of the isobutylene,</p> <p>8 8 correct?</p> <p>9 9 MR. JENKINS: I just object. The</p> <p>10 10 question makes no sense.</p> <p>11 11 MR. HOFFMAN: I didn't understand the</p> <p>12 12 question either.</p> <p>13 13 Q. Okay. Let's try it again.</p> <p>14 14 <u>Does commercial grade MTBE contain</u></p> <p>15 15 <u>TBA?</u></p> <p>16 16 <u>A. Typically, yes, a small amount.</u></p> <p>17 17 Q. What written literature, warnings,</p> <p>18 18 instructions were given to your customers related</p> <p>19 19 to the characteristics of TBA in groundwater?</p> <p>20 20 A. I am not aware of any.</p> <p>21 21 Q. Are you aware of any Arco Chemical</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                   | <p>1 1 stations related to TBA?</p> <p>2 2 A. No.</p> <p>3 3 (Whereupon, Bott Deposition</p> <p>4 4 Exhibit No. 7, Document Bates Stamped ARC 067913</p> <p>5 5 and ARC 067914, marked.)</p> <p>6 6 BY MR. SUMMY:</p> <p>7 7 Q. I show you what has been marked as</p> <p>8 8 Deposition Exhibit Number 7.</p> <p>9 9 Have you seen this document before?</p> <p>10 10 A. Not the cover, but the memo, yes.</p> <p>11 11 Q. The cover has some handwriting on it.</p> <p>12 12 Do you know whose handwriting that is?</p> <p>13 13 A. No.</p> <p>14 14 Q. Do you know who the initials are at the</p> <p>15 15 bottom of the handwritten note?</p> <p>16 16 A. I can't read it.</p> <p>17 17 Q. On the first page there are some</p> <p>18 18 stamped names. One of them is your name, David</p> <p>19 19 Bott, and the other one is William Piel.</p> <p>20 20 Do you see that?</p> <p>21 21 A. Yes.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  |

| Page 205   | Page 207  |
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| <p>1 1 number over again. 016192. There's actually two<br/> 2 2 documents here. One appears to be a material<br/> 3 3 safety data sheet for MTBE dated August 31, and<br/> 4 4 the date may be '85, and the second is dated May<br/> 5 5 9th, 1997. I will show you these two material<br/> 6 6 safety data sheets we have marked as Exhibit 18.<br/> 7 7 I'm going to ask you to identify them<br/> 8 8 after you've had a chance to look at them and to<br/> 9 9 flip to the components page.<br/> 10 10 MR. MILLER: We will go off the video<br/> 11 11 record.<br/> 12 12 THE VIDEO OPERATOR: 4:39 p.m., off<br/> 13 13 record.<br/> 14 14 (Discussion off the record.)<br/> 15 15 THE VIDEO OPERATOR: Now 4:41, on<br/> 16 16 record.<br/> 17 17 BY MR. MILLER:<br/> 18 18 Q. Have you examined the material safety<br/> 19 19 data sheets, sir?<br/> 20 20 A. I looked through them, yes.<br/> 21 21 Q. Can you tell me the apparent date of<br/> 22<br/> 23<br/> 24<br/> 25</p>   | <p>1 1 A. Yes.<br/> 2 2 Q. Now, do you know how to interpret that<br/> 3 3 from your years as a technical manager?<br/> 4 4 A. I believe this is the label section of<br/> 5 5 the MSDS which would be typical of the label that<br/> 6 6 you would put on a container if you stored it<br/> 7 7 that way.<br/> 8 8 Q. And what does it list as the amount of<br/> 9 9 MTBE present?<br/> 10 10 A. It says AP, which would be<br/> 11 11 approximately, 97 percent.<br/> 12 12 Q. Does it disclose what the other 3<br/> 13 13 percent of the product is?<br/> 14 14 A. It does not.<br/> 15 15 Q. Is it your understanding from your<br/> 16 16 years as an Arco Chemical employee that that<br/> 17 17 product would contain some TBA?<br/> 18 18 A. It would typically contain some TBA,<br/> 19 19 yes.<br/> 20 20 Q. Could you turn to the material safety<br/> 21 21 data sheet for 1997 for MTBE.<br/> 22<br/> 23<br/> 24<br/> 25</p>  |
| Page 206   | Page 208  |
| <p>1 1 the first one from Arco Chemical Company?<br/> 2 2 A. Do you mean these top, the top sheet?<br/> 3 3 Q. There is a date at the top apparently<br/> 4 4 of each page. On some pages the legibility is<br/> 5 5 better than others. I apologize, but it was<br/> 6 6 faxed here, so I am giving you the best copy<br/> 7 7 available to me at the moment.<br/> 8 8 A. This looks like page 6, 7 and 8 of an<br/> 9 9 MSDS dated August 31st, either '85 or '95. Maybe<br/> 10 10 '95 if you look at the second page.<br/> 11 11 Q. And could you turn to the component<br/> 12 12 section of that particular MTBE product, please.<br/> 13 13 A. Could you give me the page.<br/> 14 14 Q. You have the only copy, sir. I'd be<br/> 15 15 happy to if I --<br/> 16 16 (Document tendered.)<br/> 17 17 Q. If you look at page, the second page,<br/> 18 18 16193, there's a section that says component<br/> 19 19 name, MTBE.<br/> 20 20 Do you see that portion? It's about<br/> 21 21 midway in the document.<br/> 22<br/> 23<br/> 24<br/> 25</p> | <p>1 1 A. I will give you that.<br/> 2 2 Q. Yes. Let me see if I can help you. It<br/> 3 3 begins on page 16154. It has an apparent date of<br/> 4 4 May 9th, 1997 at the top, and under component<br/> 5 5 name it indicates MTBE and lists a percentage.<br/> 6 6 A. Right.<br/> 7 7 Q. And what is listed there as far as the<br/> 8 8 contents of the product that Arco was selling?<br/> 9 9 MR. HOFFMAN: I think -- objection,<br/> 10 10 because this MSDS is for something called<br/> 11 11 Arcopure, high purity MTBE, whereas the other<br/> 12 12 MSDS was for MTBE.<br/> 13 13 MR. MILLER: Okay. That's fine.<br/> 14 14 Q. Is that the case, sir?<br/> 15 15 A. Yes.<br/> 16 16 Q. Now, for this particular MTBE product,<br/> 17 17 what is the composition of the product, according<br/> 18 18 to your material safety data sheet?<br/> 19 19 A. This particular product is a solvent,<br/> 20 20 high purity solvent grade MTBE used in things<br/> 21 21 like pharmaceutical manufacture, and the purity<br/> 22<br/> 23<br/> 24<br/> 25</p> |

| Page 209   | Page 211   |
|--|--|
| <p>1 here is GT, which is greater than 99.9 percent.</p> <p>2 Q. So it is possible to make MTBE without</p> <p>3 TBA; is that correct?</p> <p>4 A. Anything is possible, yes.</p> <p>5 Q. Well, Arco Chemical Company</p> <p>6 manufactures an MTBE product without TBA; is that</p> <p>7 correct?</p> <p>8 MR. JENKINS: Objection. It assumes</p> <p>9 facts not in evidence. It's greater than 99.9</p> <p>10 percent pure, but the number 100 is not pure.</p> <p>11 A. It can be manufactured, but it would be</p> <p>12 too expensive to sell this for gasoline use.</p> <p>13 Q. At least given the way Arco Chemical</p> <p>14 Company makes the product; is that correct?</p> <p>15 A. Given the way anybody makes the</p> <p>16 product.</p> <p>17 Q. So you would expect that all MTBE would</p> <p>18 contain some TBA?</p> <p>19 A. I would expect all MTBE would not be</p> <p>20 99.9 percent. It could contain some small</p> <p>21 amounts of TBA.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 this 1997 one.</p> <p>2 Q. That would be the last in the series</p> <p>3 that you would have been responsible for more or</p> <p>4 less, that is, the 1997 editions?</p> <p>5 A. Actually, the 1997 is the Arcopure</p> <p>6 which I didn't have anything to do with. The</p> <p>7 latest one here appears to be 1995.</p> <p>8 Q. For MTBE?</p> <p>9 A. Fuel grade for regular MTBE.</p> <p>10 Q. And does that one mention TBA as a</p> <p>11 component of the product that your employer</p> <p>12 made?</p> <p>13 A. I don't believe so.</p> <p>14 Q. All right.</p> <p>15 Now, as a chemical engineer and former</p> <p>16 technical manager for Arco Chemical, you know</p> <p>17 some of the chemistry involved in MTBE; is that</p> <p>18 correct?</p> <p>19 A. It depends what you mean by chemistry.</p> <p>20 Q. MTBE is a name for a molecule; is that</p> <p>21 correct?</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| Page 210   | Page 212   |
| <p>1 Q. Why is that? As a chemical engineer,</p> <p>2 could you explain that.</p> <p>3 A. Yes, I could.</p> <p>4 Q. Please.</p> <p>5 A. Methanol is reactive with isobutylene</p> <p>6 to create MTBE, manufacture MTBE. Methanol often</p> <p>7 contains a small amount of water as an impurity,</p> <p>8 and the water in the methanol can react with the</p> <p>9 isobutylene as well as the methanol, and when</p> <p>10 water reacts with isobutylene, it creates TBA.</p> <p>11 Q. I see.</p> <p>12 So basically if there's some water in</p> <p>13 the methane, you are going to end up with some</p> <p>14 TBA in the MTBE product made from methane and</p> <p>15 isobutylene?</p> <p>16 A. Methanol. Yes.</p> <p>17 Q. Right.</p> <p>18 Does any of the material safety data</p> <p>19 sheets that I have marked as Exhibit 18 mention</p> <p>20 that TBA is present in product?</p> <p>21 A. It doesn't appear to be listed here in</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                     | <p>1 A. Yes.</p> <p>2 Q. And is it your understanding that</p> <p>3 MTBE's principal use was for blending with</p> <p>4 gasoline?</p> <p>5 A. Yes.</p> <p>6 Q. At least those are the customers that</p> <p>7 your firm had, principally refineries for that</p> <p>8 product, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And did you understand that once MTBE</p> <p>11 is blended with gasoline, that molecule, MTBE,</p> <p>12 would remain intact in the gasoline?</p> <p>13 A. Yes.</p> <p>14 Q. So it would be part of the gasoline</p> <p>15 product ultimately put in underground storage</p> <p>16 tanks. Was that your understanding?</p> <p>17 A. It would be a component of the finished</p> <p>18 gasoline.</p> <p>19 Q. And was that the reason, to your</p> <p>20 understanding, that you were getting some phone</p> <p>21 calls about MTBE in groundwater; that is, that it</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  |

EXHIBIT

tabbies

51

999/28

## Legal Retention at MSXSOC

From: Marshall GR (Glen) at MSXSOPC  
 Sent: Friday, May 29, 1998 5:36 PM  
 To: Stanley CC (Curtis) at MSXWHWTC  
 Cc: Chistolini C. Wayne [STAR]  
 Subject: RE:

We (Shell) are also moving on said focus. "Achilles Heel" of systems has always been the "Bubba-factor".....the best intentions of hardware manufacturers and designers being ultimately defeated by poor installation and maintenance practices. Have been working last 2 years with Oy U-Cont (Varkaus, Finland) and Trusco Tanks (Fresno, CA) on a modular UST system manufactured in a factory (controlled environment) by properly trained personnel under constant supervision and inspection. Initial evaluations indicate a significantly more reliable system installed with roughly 20%+ savings in total project time and costs (related to UST portion of project). LA City Fire loved concept. Have two projects in for permits in LA Basin now. Coupled with our "Compliance Management Concept" (Veeder-Root Simplicity), overall concept could provide significant movement towards what UST system operation should have been all along. Advise if further concept details desired.

Glen R. Marshall, P.E.

Staff Engineer  
 Marketing Engineering  
 Shell Oil Products Company  
 TSP:1138  
 Office: (713) 241-1452  
 Fax: (713) 241-7166  
 Beeper: (800) 342-4033  
 Shell ELS: EM10138 @ MSXSOPC  
 Internet: gmarshall@shellus.com

## -----Original Message-----

From: Stanley CC (Curtis) at MSXWHWTC  
 Sent: Friday, May 29, 1998 9:03 AM  
 To: Marshall GR (Glen) at MSXSOPC  
 Subject: FW:

Glen,

I told API that they had better have a project on slate to evaluate existing systems and new system design, installation, and operations. I already have a good idea what Santa Clara is going to find and if the industry isn't ready with an adequate response/solution, we are all going to look bad. I foresee many agencies requiring extensive groundwater monitoring systems to evaluate whether or not MTBE is being released into the environment, especially in environmentally sensitive areas (near wells, fractured bedrock, etc.).

**Curtis C. Stanley**

Environmental Technology Directorate - Soil and Groundwater  
 Westhollow Technology Center

(phone-☎) 281-544-7675 (fax-☎) 281-544-8727

e-mail: [ccstanley@shellus.com](mailto:ccstanley@shellus.com)

(This communication per applicable agreements between our respective companies.)

## -----Original Message-----

From: Judy Shaw [SMTP:shaw@api.org] <<mailto:shaw@api.org>>  
 Sent: Friday, May 29, 1998 8:57 AM  
 To: Al Jessel; Brian Hamey; C. Fairbrother; Carol Fairbrother; Curt Stanley; Dave Peirce; David Smith; Don Gilson; Eric Vogt; Gene Mancini; Georgia Callahan; Gerry Raabe; Gweneyette Broussard; James Rocco; Jeff Sickenger; Jim Stevenson; John Taunton; Lee Hoffman; Mark Saperstein; Mary Kate Kell; Mike Lobue; Mike Wang; Ned Seppi; Ron Benton; Tim Buscheck; William Doyle  
 Cc: Alexis Steen; Bill Bush; Bill Frick; Bob Greco; Bruce bauman; Carol Henry; Chuck Krambuhl; David Deal; David Lax; Debi Tulou; Dee Gavora; Eldon Rucker; Howard Feldman; Jim Williams (MDM); Karen Inman; Kim Ashton; Larry Magni; Marc Meteyer; Martha Jordan; Molly Sinclair; Rick Brown; Robert Barter; Ron Chittim; Theresa Pugh; Tom Lareau; Valerie Ughetta  
 Subject:

You need to look at the following; it relates to the source identification /protection discussion we had the other day.

**Legal Retention at MSXSOC**

**From:** Marshall Glen R [Newcos]  
**Sent:** Friday, March 12, 1999 2:47 AM  
**To:** Stanley CC (Curtis) at MSXWHWTC  
**Subject:** RE: Draft Agenda; Roster; Info Items

Already discussed details with Mike Barsa twice. '98 upgrade work will have no affect on MTBE issues. Any system that was going to have problems is still going to have problems. Upgrades addressed inadvertent spills and releases, not root causes of tank or line leaks. Also, all R&D work I'm familiar with indicates that MTBE will have no affect on same.

**Glen R. Marshall, P.E.**

Staff Coordinator  
Technical Services - Engineering  
**Equiva Services, L.L.C.**  
Shell + Texaco + Saudi Aramco

9/80 Schedule "A"  
Office: (281) 874-4857  
Fax: (281) 874-7979  
Beeper: (800) 342-4033  
Alliance ELS: Marshall GR (Glen)  
Internet: GRMarshall@Equiva.com

Address: Equiva Services, L.L.C.  
12700 Northborough Drive  
Suite 300C12  
Houston, TX 77067

-----Original Message-----

**From:** Stanley CC (Curtis) at MSXWHWTC [SMTP:CS193653@MSXWHWTC SHELL.COM]  
**Sent:** Thursday, March 11, 1999 3:35 AM  
**To:** Marshall Glen R [Newcos]  
**Subject:** RE: Draft Agenda; Roster; Info Items

Glen,

This is just an fyi. The new MTBE counsel (outside attorney) is interested in hearing your opinion on tank upgrades in relation to MTBE release prevention. They will contact you in the near future.

Curt

-----Original Message-----

**From:** Marshall Glen R [Newcos]  
**Sent:** March 10, 1999 9:32 PM  
**To:** Stanley CC (Curtis) at MSXWHWTC  
**Subject:** RE: Draft Agenda; Roster; Info Items

Any specific support needs from me or my department? I'm not officially on any of the attached committees to my knowledge, have out-of-state vendor coming in on 3-31, and will only be in office 3-29 thru 4-1. Due to current travel commitments, will not be back in office on regular basis until roughly 4-8.

**Glen R. Marshall, P.E.**

Staff Coordinator  
Technical Services - Engineering  
**Equiva Services, L.L.C.**  
Shell + Texaco + Saudi Aramco

9/80 Schedule "A"  
Office: (281) 874-4857  
Fax: (281) 874-7979  
Beeper: (800) 342-4033  
Alliance ELS: Marshall GR (Glen)  
Internet: GRMarshall@Equiva.com

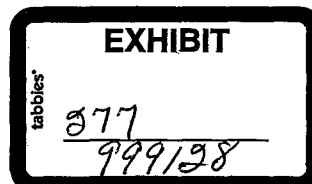
Address: Equiva Services, L.L.C.  
12700 Northborough Drive  
Suite 300C12  
Houston, TX 77067

-----Original Message-----

**From:** Stanley CC (Curtis) at MSXWHWTC [SMTP:CS193653@MSXWHWTC.SHELL.COM]  
**Sent:** Wednesday, March 10, 1999 12:48 PM  
**To:** Allen Register; Arlene Warden; Brad Boschetto; Bruce Krewinghaus; Chen Chiang; Chris Neaville; Christine White; Chuck Lieder; Cindy Delaney; Daniel Farmer; Ed Hsu; Edward Dinkfeld; Erik Hansen; F Benton; Felicia Federico; George Deeley; George Devault; Gerard Spinnler; Glen Marshall; Gweneyette Broussard; Ileana Rhodes; James Michalak; Jerry Ivie; Joe Salanitro; Jonathan Miller; Kathleen Gilmore; Ken Darmer; Ken Springer; Marjorie Hong; Michael Gallagher; Otto Meyers; Paul Sun; Pete Parker; Phil Daly; Phil Dorn; Richard Lewis; Rick Wolfe; Robert Dedoes; Robert Ettinger  
**Subject:** FW: Draft Agenda; Roster; Info Items

FYI

Curt



SH 022667



## **Exhibit 10**

ORIGINAL

**FILED**  
San Francisco County Superior Court

APR 15 2002

GORDON PARK-LI/ Clerk  
BY: Debra A. Hays  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION  
DEPARTMENT NO. 514

SOUTH TAHOE PUBLIC UTILITY  
DISTRICT,

Plaintiff,

vs.

ATLANTIC RICHFIELD COMPANY,  
et al.,

Defendants.

CASE NO. 999128

SPECIAL VERDICT [PHASE I]

(3/4/02)

We, the jury in the above-entitled action, find as follows on the questions submitted to us:

**Question No. 1:** Was gasoline containing MTBE manufactured, sold, or supplied by any of the following defendants defective in design because the risk of harm inherent in its design outweighed the benefits of that design?

Answer "yes" or "no" after the name of each such defendant. If you answer "yes" as to any defendant, during what time period was the gasoline containing MTBE manufactured, sold, or supplied by that defendant defective in design?

|                           | Yes                                 | No                       | If yes, time period          |
|---------------------------|-------------------------------------|--------------------------|------------------------------|
| Answer:                   |                                     |                          |                              |
| 11-1 Shell Oil Company    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fall/Winter 1990 to 12-31-97 |
| ✓ Equilon Enterprises LLC | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1-1-98 to Present            |
| ✓ Texaco, Inc.            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1988 to 12-31-1997           |
| q-3 Tosco Corporation     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | April 1992 to March 1996     |

If you answer "no" as to each defendant, then go to question No. 3. If you answer "yes" as to one or more defendants, then answer the next question only as to such defendants.

**Question No. 2:** As to each defendant for which you answered "yes" in Question No. 1, did the defect exist when the gasoline containing MTBE left the possession of such defendant?

Answer "yes" or "no" for each such defendant. If you answer "yes" as to any defendant, during what time period was the gasoline containing MTBE manufactured, sold, or supplied by that defendant defective in design?

|                           | Yes                                 | No                       | If yes, time period            |
|---------------------------|-------------------------------------|--------------------------|--------------------------------|
| Answer:                   |                                     |                          |                                |
| 11-1 Shell Oil Company    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fall/Winter 1990 to 12-31-1997 |
| ✓ Equilon Enterprises LLC | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1-1-1998 to Present            |
| ✓ Texaco, Inc.            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1988 to 12-31-1997             |
| q-3 Tosco Corporation     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | April 1992 to March 1996       |

**Question No. 3:** Was gasoline containing MTBE manufactured, sold or supplied by any of the following defendants defective because of a failure to warn?

Answer "yes" or "no" after the name of each such defendant. If you answer "yes" as to any defendant, during what time period was the gasoline containing MTBE manufactured, sold, or supplied by that defendant defective due to a failure to warn?

|                           | Yes                                 | No                       | If yes, time period            |
|---------------------------|-------------------------------------|--------------------------|--------------------------------|
| Answer:                   |                                     |                          |                                |
| 12-0 Shell Oil Company    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fall/Winter 1990 to 12-31-1997 |
| ✓ Equilon Enterprises LLC | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1-1-1998 to Present            |
| ✓ Texaco, Inc.            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1992 to 12-31-1997             |
| 10-2 Tosco Corporation    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | April 1996 to Present          |

**Question No. 4:** As to each defendant for whom you answered "yes" in Question No. 3, did the defect exist, because of a failure to warn, when the gasoline containing MTBE left the possession of such defendant?

Answer "yes" or "no" after the name of each such defendant. If you answer "yes" as to any defendant, during what time period was the gasoline containing MTBE manufactured, sold, or supplied by that defendant defective due to a failure to warn?

|                           | Yes                                 | No                       | If yes, time period            |
|---------------------------|-------------------------------------|--------------------------|--------------------------------|
| Answer:                   |                                     |                          |                                |
| 12-0 Shell Oil Company    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fall/Winter 1990 to 12-31-1997 |
| ✓ Equilon Enterprises LLC | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1-1-1998 to Present            |
| ✓ Texaco, Inc.            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1992 to 12-31-1997             |
| 10-2 Tosco Corporation    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | April 1996 to Present          |

///

///

///

**Question No. 5:** Were the risks involved in the transportation, storage and handling of MTBE recognized by all of Lyondell Chemical Company's (ARCO Chemical Company's) California refiner and distributor customers, who transported, stored and handled MTBE in bulk? If not, during what time period were the risks not recognized?

Answer "yes" or "no." If you answer is "no," state the time period.

Yes

No

If no, time period

Answer:

12-0

☒

1992 to 1996

If you answered "no" to Question No. 5, then answer Question No. 6. If you answered "yes" to Question No. 5, then answer Question No. 9.

**Question No. 6:** Was MTBE manufactured, sold or supplied by defendant Lyondell Chemical Company (ARCO Chemical Company) defective because of a failure to warn?

Answer "yes" or "no." If you answer "yes", during what time period was the MTBE manufactured, sold or supplied by the defendant defective due to a failure to warn?

Yes

No

If yes, time period

Answer:

11-1

☒

1992 to 1996

If you answered Question No. 6 "yes", answer Question No. 7. If you answered Question No. 6 "no", answer question No. 9.

**Question No. 7:** Did the defect exist, because of a failure to warn, when the MTBE left the possession of defendant Lyondell Chemical Company (ARCO Chemical Company)?

Answer "yes" or "no." If you answer "yes", during what time period was the MTBE manufactured, sold or supplied by the defendant defective due to a failure to warn?

Yes

No

If yes, time period

Answer:

11-1

☒

1992 to 1996

If you answered Question No. 7 "yes", answer Question No. 8. If you answered Question



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MERCED

FILED 2/9/12  
MERCED SUPERIOR COURT  
By: *Phyllis Gallagher*  
Clerk

CITY OF MERCED,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

Case No. 148451

Assigned to the Honorable Carol K. Ash

**SPECIAL VERDICT FORM**

**DIRECTIONS:** Answer all questions unless directed to skip them. Answer all questions for each defendant listed (some defendants are omitted from certain questions intentionally, and you need not answer questions for any defendant that is not listed). For each question that calls for a "Yes" or "No" answer, fill in the blanks with the number of jurors voting "Yes" and the number of jurors voting "No."

The following table lists the stations in this case and the pages of this form where questions regarding each station begin.

- |    |  |         |
|----|--|---------|
| 1. | Beacon 3-505 at 3006 G Street                  | Page 2  |
| 2. | Buggy Bath at 2210 G Street                    | Page 5  |
| 3. | Former Exxon at 1415 R Street                  | Page 8  |
| 4. | Former Texaco at 1415 R Street                 | Page 11 |
| 5. | Gas n Save at 963 West 16 <sup>th</sup> Street | Page 14 |
| 6. | Pacific Pride Cardlock at 1455 R Street        | Page 17 |
| 7. | Century Chevron at 1970 East Childs Avenue     | Page 20 |

We, the jury, answer the questions submitted to us as follows:

**SECTION A: Beacon 3-505 service station at 3006 G Street**

1. Has the City proven that gasoline containing MTBE refined, distributed or sold by Shell/Equilon was delivered to the Beacon 3-505 station at 3006 G Street?

12 Yes 0 No

*If 9 or more jurors answered "Yes," proceed to the next question. If 9 or more jurors answered "No," skip the other questions in this Section and move on to the next Section about the next station.*

2. Has the City proven that the gasoline containing MTBE identified in answering the prior question was spilled or leaked from that station?

12 Yes 0 No

*If 9 or more jurors answered "Yes," proceed to the next question. If 9 or more jurors answered "No," skip the other questions in this Section and move on to the next Section about the next station.*

3. Has the City proven that the release or releases found in the answer to the prior question caused harm to the City's drinking water supply system?

12 Yes 0 No

*If 9 or more jurors answered "Yes," proceed to the next question. If 9 or more jurors answered "No," skip the other questions in this Section and move on to the next Section about the next station.*

4. Did gasoline containing MTBE have potential risks that were known, or knowable through the use of scientific knowledge available at the time of manufacture, distribution or sale?

12 Yes 0 No

*If 9 or more jurors answered "Yes," proceed to the next question. If 9 or more jurors answered "No," skip the other questions in this Section and move on to the next Section about the next station.*

5. Has the City proven that Shell/Equilon failed to adequately warn or instruct the owner/operators of the Beacon 3-505 station concerning the safe handling of the product?

12 Yes 0 No

*If 9 or more jurors answered "Yes," proceed to the next question. If 9 or more jurors answered "No," skip the other questions in this Section and move on to the next Section about the next station.*

6. Has the City proven that Shell/Equilon knew or should reasonably have known that gasoline containing MTBE was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner?

12 Yes 0 No

7. Because of their particular position, training, experience, knowledge, or skill, did the owner/operators of the Beacon 3-505 station know, or should they have known, of the risk, harm, or danger from gasoline containing MTBE?

0 Yes 12 No

*If 9 or more jurors answered "No," proceed to the next question. If 9 or more jurors answered "Yes," skip the other questions in this Section and move on to the next Section about the next station.*

8. Was the lack of sufficient instructions or warnings a substantial factor in causing harm to the City of Merced?

9 Yes 3 No

*If 9 or more jurors answered "Yes," proceed to the next question. If 9 or more jurors answered "No," skip the other questions in this Section and move on to the next Section about the next station.*

9. Would the City's same harm have occurred even if Shell/Equilon had provided specific warnings or instructions about MTBE?

0 Yes 12 No

*If 9 or more jurors answered "No," proceed to the next question. If 9 or more jurors answered "Yes," skip the other questions in this Section and move on to the next Section about the next station.*

STATE OF NEW HAMPSHIRE  
SUPERIOR COURT

MERRIMACK, SS.

03-C-0550

STATE OF NEW HAMPSHIRE  
v.  
HESS CORPORATION,  
et al.

**SPECIAL VERDICT FORM – part 1**

PETER H. FAUVER, Presiding Justice

**INJURY**

1. Has the State proven, by a preponderance of the evidence, that New Hampshire groundwater has been or will be harmed by MTBE gasoline in the future?

YES   X   NO           

*If you answered no, **stop here**, proceed to page 5, and have your foreperson sign and date the form.*

*If you answered yes, proceed to next Question.*

**NEGLIGENCE CLAIM**

- 2a. Has the State proven, by a preponderance of the evidence, that ExxonMobil was negligent in its manufacturing or supply of MTBE gasoline to the State of New Hampshire?

Yes   X   No           

*If you answered no, proceed to Question 3a.*

*If you answered yes, proceed to next Question.*

- 2b. Has the State proven, by a preponderance of the evidence, that MTBE gasoline was a substantial factor in bringing about the State's harm and that the State's harm would not have occurred but for MTBE gasoline?

Yes   X   No           

*Proceed to next Question.*

**DESIGN DEFECT CLAIM**

- 3a. Has the State proven, by a preponderance of the evidence, that MTBE in gasoline created a defective condition that was unreasonably dangerous.

YES   X   NO           

*If you answered no, proceed to Question 4a.  
If you answered yes, proceed to next Question.*

- 3b. Has the State proven, by a preponderance of the evidence, that the ways in which MTBE gasoline would be used were reasonably foreseeable to ExxonMobil?

YES   X   NO           

*If you answered no, proceed to Question 4a.  
If you answered yes, proceed to next Question.*

- 3c. Has the State proven, by a preponderance of the evidence, that MTBE gasoline was a substantial factor in bringing about the State's harm and that but for MTBE being in gasoline the State would not be harmed.

Yes   X   No           

*If you answered no, proceed to Question 4a.  
If you answered yes, proceed to next Question.*

**DEFENSES TO DESIGN DEFECT CLAIM**

- 3d. Has ExxonMobil proven, by a preponderance of the evidence, that in designing its MTBE gasoline, it complied with the state of the art?

YES            NO   X  

*Proceed to next Question.*



**FAILURE TO WARN CLAIM**

- 4a. Has the State proven, by a preponderance of the evidence, that ExxonMobil failed to adequately warn the State about the hazards of MTBE gasoline?

YES   X   NO           

*If you answered no, proceed to Question 5a.*

*If you answered yes, proceed to next Question.*

- 4b. Has the State proven, by a preponderance of the evidence, that it would not have used MTBE gasoline or would have used it differently if ExxonMobil had provided an adequate warning.

YES   X   NO           

*If you answered no, proceed to Question 5a.*

*If you answered yes, proceed to next Question.*

- 4c. Has the State proven, by a preponderance of the evidence, that failure to warn was a substantial factor in bringing about the State's harm and that but for the failure to warn the State would not be harmed.

YES   X   NO           

*If you answered no, proceed to Question 5a.*

*If you answered yes, proceed to next Question.*

**DEFENSES TO FAILURE TO WARN CLAIM**

- 4d. Has ExxonMobil proven, by a preponderance of the evidence, that the hazards posed by the use of MTBE in gasoline were obvious, or were known and recognized by the State?

YES            NO   X  

*If you answered no, proceed to next Question.*

*If you answered yes, proceed to Question 5a.*

- 4e. Has ExxonMobil proven, by a preponderance of the evidence, that it provided distributors with adequate warnings of the hazards of MTBE gasoline?

Yes \_\_\_\_\_ No X \_\_\_\_\_

*If you answered no, proceed to Question 5a.  
If you answered yes, proceed to next Question.*

- 4f. Has ExxonMobil proven, by a preponderance of the evidence, that ExxonMobil had reasonable assurances from distributors that they would pass along the adequate warnings from ExxonMobil to end users and consumers?

Yes \_\_\_\_\_ No \_\_\_\_\_

*Proceed to next Question.*

#### MARKET SHARE LIABILITY

- 5a. Has the State proven, by a preponderance of the evidence, that MTBE gasoline is fungible?

Yes X \_\_\_\_\_ No \_\_\_\_\_

*If you answered no, **stop here**, proceed to the end, and have your foreperson sign and date this form.  
If you answered yes, proceed to next Question.*

- 5b. Has the State proven, by a preponderance of the evidence, that it cannot trace MTBE gasoline found in groundwater and in drinking water back to the company that manufactured or supplied that MTBE gasoline?

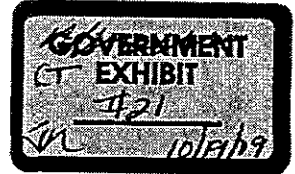
Yes X \_\_\_\_\_ No \_\_\_\_\_

*If you answered no, **stop here**, proceed to the end, and have your foreperson sign and date this form.  
If you answered yes, proceed to next Question.*

- 5c. Has the State proven, by a preponderance of the evidence, that it has identified a substantial segment of the relevant market for gasoline containing MTBE?

Yes X \_\_\_\_\_ No \_\_\_\_\_

*If you answered no, **stop here**, proceed to the end, and have your foreperson sign and date this form.  
If you answered yes, proceed to next Question.*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CITY OF NEW YORK, *et al.*,

Plaintiff,

- against -

EXXON MOBIL CORPORATION,

Defendant.

INTERROGATORY SHEET  
PHASE III

04 Civ. 3417 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

**Injury**

1. Has the City proven, by a fair preponderance of the credible evidence, that it is, or will be, injured by the MTBE that will be in the combined outflow of the Station 6 wells, given your earlier findings that: (a) the City intends, in good faith, to use the water from the Station 6 wells within the next fifteen to twenty years to serve as a back-up source of drinking water; and (b) MTBE will peak at a level of 10 parts per billion in the combined outflow of the Station 6 wells in 2033?

Yes ☒ No ☐

If you answered "Yes" to this question, proceed to Question 2. If you answered "No" to this question, proceed to Question 7 (Trespass) and do not answer any other questions.

**Direct Spiller Causation**

2. Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil was a cause of the City's injury as a direct spiller?

Yes ☒ No ☐

**Proceed to the next question.**

**Manufacturer, Refiner, Supplier or Seller *Causation***

3. Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil was a *cause* of the City's injury in its capacity as a manufacturer, refiner, supplier or seller?

Yes ☒ No ☐

**If you answered "Yes" to either Question 2 or 3, proceed to Question 5. If you answer "No" to both Questions 2 and 3, proceed to Question 4.**

**Manufacturer or Refiner *Contribution***

4. Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil *contributed* to the City's injury in its capacity as a manufacturer or refiner?

Yes ☐ No ☐

**If you answered "Yes" to this question, proceed to the next question. If you answered "No" to this question and to Questions 2 and 3, proceed to Question 7 (Trespass) and do not answer any further questions after Question 7.**

**Products Liability Claims**

**Design Defect Claim**

- 5a. Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil's gasoline containing MTBE was not reasonably safe for its intended or reasonably foreseeable purpose or in light of the reasonably foreseeable harms caused by its use?

Yes ☒ No ☐

**Proceed to the next question.**

- 5b. Has the City proven, by a fair preponderance of the credible evidence, that there was a safer, feasible alternative design at the time ExxonMobil's gasoline containing MTBE was marketed?

Yes ☐ No ☒

**If you answered "Yes" to Questions 5a and 5b, then proceed to the next question. If you answered "No" to either Question 5a or Question 5b, then proceed to Question 6a and do not answer Questions 5c or 5d.**

- 5c. **If you answered "Yes" to Questions 2 and/or 3: Has the City proven, by a fair preponderance of the credible evidence, that the defective design in ExxonMobil's gasoline containing MTBE was a substantial factor in causing the City's injury? If you answered "No" to Questions 2 and 3, do not answer this question and proceed to the next question.**

Yes ☐ No ☐

**If you answered "Yes" to this question, Proceed to Question 6a. If you answered "No" to this question, proceed to the next question.**

- 5d. **If you answered "Yes" to Question 4: Has the City proven, by a fair preponderance of the credible evidence, that the design defect in the commingled gasoline containing MTBE was a substantial factor in causing the City's injury? If you answered "No" to Question 4, do not answer this question. If you have not answered Question 4, please do so now, then return to this question.**

Yes ☐ No ☐

**Proceed to the next question.**



### **Insufficient Warning Claim**

- 6a. Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil's product was defective because ExxonMobil gave no warnings or insufficient warnings?

Yes ☒ No ☐

**If you answered "No" to this question, proceed to Question 7. If you answered "Yes" to this question, proceed to the next question.**

- 6b. **If you answered "Yes" to Questions 2 and/or 3:** Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil's failure to warn or insufficient warning was a substantial factor in causing the City's injury? **If you answered "No" to both Questions 2 and 3, do not answer this question and proceed to Question 6c.**

Yes ☒ No ☐

**If you answered "Yes" to this question, proceed to Question 7. If you answered "No" to this question, proceed to the next question.**

- 6c. **If you answered yes to Question 4:** Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil's failure to warn or insufficient warning was a substantial factor in contributing to the City's injury? **If you answered "No" to Question 4 do not answer this question. If you have not answered Question 4, please do so now, then return to this question.**

Yes ☐ No ☐

**Proceed to the next question.**

### **Trespass Claim**

7. Has the City proven, by a fair preponderance of the credible evidence, that ExxonMobil trespassed onto the City's property?

## **Exhibit 11**

1

E7fWmtbC

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2  
3 IN RE: METHYL TERTIARY BUTYL 00 MDL 1358  
3 ETHER ("MTBE") PRODUCTS Master File  
4 LIABILITY LITIGATION No. 1:00-1898(SAS)  
5 -----x M21-88

6 This document relates to:  
6 Commonwealth of Puerto Rico, et al.

7 v.  
7 Shell Oil Co., et al,  
8 Case No. 07 Civ. 10470 (SAS)

8  
9 -----x

New York, N.Y.  
July 15, 2014  
2:30 p.m.

12 Before:

13 HON. SHIRA A. SCHEINDLIN,

14 District Judge

15 APPEARANCES

16 MILLER & AXLINE LLP  
17 Attorneys for Plaintiffs  
17 BY: DUANE C. MILLER  
18 ROBIN L. GREENWALD  
18 -and-  
19 JOHN K. DEMA  
19 SCOTT E. KAUFF  
20 NATHAN SHORT

21 McDERMOTT, WILL & EMERY LLP  
21 Attorneys for Defendants Exxon Mobil Corp.  
22 and defendants' liaison counsel  
22 BY: JAMES A. PARDO  
23 STEPHEN J. RICCARDULLI  
23 -and-  
24 ARCHER & GREINER, PC  
24 BY: WILLIAM J. STACK  
25 CARLOS M. BOLLAR

SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

E7fWmtbC

1 190. Again, five million versus 190, so with all due respect,  
2 we disagree with the defendants that it is irrelevant or  
3 shouldn't be considered simply because it meets that ban  
4 requirement. It still can cause harm to the environment.

5 THE COURT: In other words, the commonwealth passed  
6 legislation that allows people to sell material that will harm  
7 the island?

8 MR. KAUFF: It's not supposed to get out of their  
9 tanks.

10 THE COURT: That's true.

11 MR. KAUFF: It's when it's out of the tanks that it  
12 harms the environment. If it stays in their tanks and it's  
13 handled property, it wouldn't harm the environment.

14 THE COURT: That's going to be the response to your  
15 motion, that legislation or not, that's not the end of the  
16 matter.

17 MR. WALLACE: Understood. I respect the argument. I  
18 could refute it now, but all I'm asking is that you permit me  
19 to bring on a motion.

20 THE COURT: Not necessarily because it's Shell  
21 specific or everybody.

22 MR. WALLACE: Indeed.

23 THE COURT: Sounds like the defense wants to make that  
24 motion, whoever has the motion, if you want to take the lead,  
25 that's fine, but it can be made, of course. What would you say

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E7fWmtbC

1 station owner been more fully aware of the harm caused by MTBE,  
2 it would have made a different decision with respect to taking  
3 the risk of not locating or remediating a leaking tank.

4 MR. RICCARDULLI: Your Honor, that decision may have,  
5 again, I don't know. Respectfully, I probably disagree with  
6 that decision, but I understand what it was, but that was based  
7 on whatever evidence was in the record in the City of New York  
8 case. We think there's different evidence here, and a lack  
9 thereof, of evidence that would allow Mr. Moreau to opine on  
10 whether or not any warning from any defendant would have made a  
11 difference at one of these stations. For example, I don't  
12 think it's enough for him to say, again, for one of the  
13 stations he says that company put in monitoring wells at the  
14 service station. They were fully compliant with the regs, so I  
15 guess he's asking the jury to assume that had somebody said we  
16 know they're fully compliant with local and state laws, you  
17 should upgrade them, the dealer would have done it at unlimited  
18 cost and would have done it, and even then would be only  
19 willing to say that the risk would have been reduced. The harm  
20 wouldn't have been prevented because he's not willing to go  
21 that far, and when you say how much would the risk have been  
22 reduced, he'd say I can't quantify, and we don't think that's  
23 enough to get over their burden to prove causation. And again  
24 it's specific on the causation piece on especially the product  
25 strict liability claim. Again, they plead it both ways, but we

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E7fWmtbC

1 think that's where it falls apart, general statements about the  
2 industry and what we should have done.

3 THE COURT: I probably would have been more receptive  
4 to your argument before the City of New York case and the  
5 Second Circuit's view on it, but they seem to accept it as  
6 rather general theory that Moreau came up with and I think  
7 plaintiffs are relying on that.

8 Is it anything more than Moreau, or is that really  
9 what you're relying on, Mr. Miller?

10 MR. MILLER: Certainly in terms of expert testimony,  
11 Moreau has been determined to be sufficient, but we also have  
12 testimony from their own employees again.

13 THE COURT: Their own employees.

14 MR. MILLER: Here, we have Exxon's counsel arguing, we  
15 depose Mr. DelaRosa, who is in charge of their tank program for  
16 over 30 years. He knew nothing about MTBE. In the deposition,  
17 we asked him did you know about this, did you know about this,  
18 and then the ultimate question, would it have made a difference  
19 to you, and he said quite possibly yes. Their own people and  
20 their own documents, defendants' own documents talk about the  
21 need to tell people about MTBE. So I view this as a question  
22 of fact, not a good motion.

23 THE COURT: How about the owner defendant argument  
24 that some defendants make, that they themselves are responsible  
25 for the tanks so there's nobody to warn? You're taking on that

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(212) 805-0300

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MERCED

CITY OF MERCED,

Plaintiff,

vs.

CHEVRON, et al

Defendants

Case No: 148451

RULING ON DEFENDANTS' MOTIONS  
FOR NONSUIT

In deciding a Motion for Nonsuit, the court must consider every legitimate inference that can reasonably be drawn in plaintiff's favor from the evidence or facts. A "reasonable inference" by the court is one on which there is "some substance to plaintiff's evidence upon which reasonable minds could differ." *Carson v. Facilities Develop. Co.* (1984) 36 Cal. 3d 830, 839. This means the judge in a jury trial may not weigh the evidence or determine the credibility of witnesses. Plaintiff's evidence is entitled to its full probative strength, as long as that evidence is relevant to the issues. *Estate of Callahan* (1967) 67 C.2d 609.

1. Statute of Limitations as to 1415 R Street, 1455 R Street, Gas n Save and Century Chevron.

Normally, it is a jury question as to when and whether a Plaintiff suffered appreciable harm for purposes of starting the running of the statute of limitations. *Lee v. Los Angeles County Metropolitan Transportation Authority* (2003) 107 Cal. App. 4<sup>th</sup> 848, 859: "The determination

1                   b. Century Chevron.

2           Plaintiff is only proceeding on a negligent operator theory and nonsuit is denied. There is  
3 sufficient evidence in the record for the jury to draw a reasonable inference releases at Century  
4 Chevron were caused by Chevron, since they were responsible for the USTs, pipelines and other  
5 equipment at the station. Thus their failure to install spill containment at fill manholes,  
6 maintaining of a faulty spill bucket and failure to upgrade equipment based upon releases  
7 discovered in 1996 would provide evidence of liability for negligent operation.

8                   3. Causation—Failure to Warn—as to all stations.

9           Nonsuit is denied. Mr. Moreau's testimony provides sufficient evidence of what types of  
10 precautions needed to be taken to prevent or reduce spills and releases, to allow this question to  
11 go the jury. Further the types of precautions he recommended would have prevented many of  
12 the types of releases that are alleged in this case. As Plaintiff pointed out, the adequacy of a  
13 warning is a question of fact for the jury. And as I pointed out originally in the ruling on  
14 Defendant's MIL No.10 to exclude certain portions of Mr. Moreau's testimony, expert testimony  
15 is not always required and a layperson can evaluate if the warnings were adequate or not. (MIL  
16 No. 10; Transcript dated 10/4/11a.m. at pages 10 and 11).

17                   4. Speculative Damages.

18                   a. Past Damages claimed as costs of testing, remediation, staff time and postage.

19           Nonsuit is granted as to past damages as they are too speculative and unable to be tied to any  
20 particular station or claim. It would be impossible for a reasonable jury to appropriately  
21 determine the amount each defendant would owe for past damages if they were found liable.

22                   b. Future Damages for assessment and remediation at the sites in the future.

23           Nonsuit is denied. A reasonable jury could determine appropriate future work at each site  
24 based upon the testimony of Mr. Norman and Mr. Angulo. There is sufficient evidence that it  
25 should at least be presented to the jury for their determination of whether or not it is too

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF MERCED

3 Before the Honorable CAROL ASH, Judge

4 -000-

5 CITY OF MERCED,

6 Plaintiff(s),

7 vs.

8 CHEVRON U.S.A., INC.,  
9 et al,

10 Defendant(s).

Case No. CU148451

11  
12  
13 REPORTER'S TRANSCRIPT

14 MOTIONS IN LIMINE

15 TUESDAY, OCTOBER 4, 2011

16  
17  
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22  
23 Reported by: RENEE L. TERRY, CSR #7321, RPR  
24 Official Reporter  
25  
26

1

1 This is Motion in Limine No. 10 to exclude certain  
2 opinions and testimony of Marcel Moreau. And defendant is  
3 seeking to exclude any testimony regarding whether or not the  
4 warnings were sufficient, alleging Mr. Moreau does not have  
5 the qualifications, like a degree in psychologist or  
6 something like that, as to whether the warnings would affect  
7 a person reading the warnings.

8 Excuse my voice. I took some more DayQuil, but it's  
9 really drying out my throat.

10 MR. PARKER: Your Honor, I have a bottle of water  
11 unopened.

12 THE COURT: I do have some hot tea here. Thank you.

13 The second portion they're seeking to exclude are the  
14 site histories. They're saying that's a complication of  
15 other documents and that they would not really assist the  
16 jury. And then, number three, they're seeking to exclude  
17 documents from oil companies that were not involved in this  
18 case.

19 My initial reaction to the motion regarding the  
20 warnings is I don't think you necessarily need expert  
21 training in psychology, et cetera, especially when you have  
22 someone like Mr. Moreau who is very familiar with MTBE and  
23 its possible dangers. I think he could testify as to what  
24 certain mitigation measures could have been taken or what  
25 could have been warned of. And then it would be up to the  
26 jury to decide if those warnings are adequate or not. I

11

1 think in the cases even that the defendants rely on that  
2 point is brought forward, that you don't necessarily need  
3 expert testimony for every type of opinion, and sometimes it  
4 is just a matter of common sense on the part of the jury.

5 And there have been cases that have found that the  
6 adequacy of warnings were proper for an expert to give his  
7 knowledge of what he would advise to be dangerous in the  
8 product and how that might be handled. And then the jury can  
9 decide considering those criteria if the warnings were  
10 adequate in this case. So that would be my tentative ruling  
11 regarding the warnings.

12 Regarding the site histories, I just think this would  
13 be helpful for the jury to have that. I mean, it is just him  
14 listing of the histories of each site. And unless there is  
15 some showing that it's inaccurate or not correct, I think it  
16 would be helpful to the jury and also as far as him  
17 expressing his opinion. So I would tend not to grant that  
18 motion.

19 As far as the third issue regarding documents from  
20 oil companies not involved in the case, I would tend to grant  
21 that motion unless at some point it did become an issue as to  
22 what was knowable by the defendants. If they denied on  
23 something, then obviously you could bring in what would be  
24 knowable in the industry.

25 Mr. Stack, are you arguing that motion?

26 MR. STACK: Yes, Your Honor.

12

## **Exhibit 12**



1

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 \_\_\_\_\_ X

4 In re: Methyl Tertiary Butyl Ether

5 ("MTBE") Products Liability Litigation

6 \_\_\_\_\_ X

7 Master File No. 1:00-1898

8 MDL No. 1358 (SAS)

9 M21-88

10 \_\_\_\_\_ X

12 30(b)(6) VIDEOTAPED ORAL DEPOSITION OF HERITAGE

13 CONOCO and CONOCOPHILLIPS COMPANY

14 by and through WAYNE WILSON,

15 In Re: Warnings

16 December 7, 2006

17 • \_\_\_\_\_ •

21 GOLKOW TECHNOLOGIES, INC.

22 1880 John F. Kennedy Boulevard, Suite 760

23 Philadelphia, Pennsylvania 19103

24 1.888.465.5698

Wilson, Wayne- ConocoPhillips- Warnings (12/07/2006)

12

1 A. Yes, we have.

2 Q. Just so that the record's clear,  
3 though, if you need to take a break at any  
4 time, please let me know. My only caveat is if  
5 there's a question pending, I'd like for you to  
6 answer it before the break. Is that  
7 understood?

8 A. Yes, it is.

9 Q. And you -- you understand that  
10 you've sworn to tell the truth today, and  
11 that's the same oath as if you were in front of  
12 a judge or a jury in a courtroom; you  
13 understand that, right?

14 A. Yes, I do.

15 Q. I've handed you what's been marked  
16 Deposition Exhibit 1. This is the notice for  
17 your deposition. Have you seen this document  
18 before?

19 A. Yes, I have.

20 Q. And you understand that you've been  
21 designated as a corporate representative today  
22 to talk about those issues in the notice for  
23 both ConocoPhillips and the Heritage Conoco  
24 entity; do you understand that?

Wilson, Wayne- ConocoPhillips- Warnings (12/07/2006)

13

1 A. Yes, I do.

2 Q. And the subject for this deposition  
3 today is essentially warnings provided  
4 regarding MTBE. Is that your understanding?

5 A. That is my understanding.

6 Q. And as a corporate representative,  
7 you understand that your job here today is to  
8 testify not just from your own experience and  
9 own opinions, but to testify on behalf of the  
10 corporation; you understand that?

11 A. Yes, I do.

12 Q. Please tell us how you prepared for  
13 this deposition.

14 A. I reviewed documents and interviewed  
15 people.

16 Q. Tell me who you interviewed, please.

17 A. I interviewed Lorraine Lewis, Sheila  
18 Ryan, Bill Broddle, Gene Harlacker, Marla  
19 Benyshek, Mitch Oliver, Karen Shorten, Jack  
20 Cearley, Mike Beevers, Jeff Meyers, Mike  
21 Hanson. Those are the ones I can recall.

22 Q. And as in prior depositions, if you  
23 think of anybody else that you interviewed, let  
24 me know and we'll add it to the list, okay?

Wilson, Wayne- ConocoPhillips- Warnings (12/07/2006)

48

1 Q. (BY MS. EVANGELISTI) One of the  
2 issues in the notice, it's on page 5. It's  
3 number 4(i), asks that you be prepared to  
4 testify about whether, when, where, and under  
5 what circumstances you -- meaning Conoco and  
6 ConocoPhillips -- notified service station  
7 owners, downstream handlers and/or any other  
8 customers in writing or otherwise that gasoline  
9 containing MTBE should be handled differently  
10 than gasoline without MTBE.

11 In conjunction with these seminars  
12 that were provided to those that ran  
13 company-owned stations, did Conoco or  
14 ConocoPhillips ever make an effort to provide  
15 this type of information, specifically whether  
16 gasoline containing MTBE should be handled  
17 differently than conventional gasoline? I  
18 understand that you're telling me they provided  
19 information that gasoline may contaminate  
20 groundwater and information about how to handle  
21 conventional gasoline or gasoline in  
22 particular.

23 My question is focused on whether  
24 any effort was made to provide information

Wilson, Wayne- ConocoPhillips- Warnings (12/07/2006)

49

1 about MTBE gasoline as compared to gasoline in  
2 general.

3 MS. JOHNSON: Objection, assumes  
4 facts in dispute, misstates testimony.

5 A. A couple of things that I would say.  
6 First of all, I've said that I was not able to  
7 learn everything that was covered in the  
8 seminars. That's one thing that I've said.

9 The other thing that I can say is  
10 that based on my investigation, the general  
11 view of the people that I talked with was that  
12 gasoline with MTBE or gasoline -- conventional  
13 gasoline without MTBE should be handled the  
14 same, in that they both should be securely  
15 stored, tightly contained, spills should be  
16 taken care of quickly, those kinds of things.

17 Q. (BY MS. EVANGELISTI) And in  
18 accordance with that position that you just  
19 mentioned, Conoco and ConocoPhillips never  
20 distinguished between gasoline in general and  
21 gasoline containing MTBE in particular. As far  
22 as providing information, it was Conoco and  
23 later ConocoPhillips' position that they  
24 shouldn't be handled any differently?

Wilson, Wayne- ConocoPhillips- Warnings (12/07/2006)

50

1 MS. JOHNSON: Objection, assumes  
2 facts, outside the scope.

3 A. Based on my investigation, the  
4 approach was that both types of gasoline, as  
5 I've explained, should be handled the same in  
6 the way that I've described it, securely  
7 contained, spills taken care of quickly, that  
8 kind of thing.

9 Q. (BY MS. EVANGELISTI) And was that  
10 same -- did that same position hold true with  
11 respect to non-company-owned stations? Was  
12 Conoco and then ConocoPhillips' position that  
13 gasoline containing MTBE should be treated no  
14 differently than gasoline in general?

15 MS. JOHNSON: Objection, vague,  
16 outside the scope.

17 A. I didn't learn that in my -- I  
18 didn't learn anything in my investigation that  
19 would say that anything was done differently  
20 for the non-company-owned stations than for the  
21 company-owned stations.

22 And in general, what I'm saying is  
23 that based on my investigation, I believe the  
24 seminars that I've talked about were primarily

Wilson, Wayne- ConocoPhillips- Warnings (12/07/2006)

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

--oOo--

-----X  
 IN RE: )  
 Methyl Tertiary ) MDL No. 1358 (SAS)  
 Butyl Ether )  
 ("MTBE") )  
 Products Liability )  
 Litigation )  
 \_\_\_\_\_X

VOLUME I

VIDEOTAPED DEPOSITION OF

KENNETH WARREN ANDERSON

Wednesday, June 20, 2007

San Francisco, California

REPORTED BY: KENNETH T. BRILL, RPR, CRR, CSR #12797

Anderson, Kenneth Warren - Chevron - Warnings (06/20/2007)

8

representing Washoe Fuel, Inc. Sorry, counsel.

BY MR. KRASS:

Q. Please state your full name and address  
 for the record.

MR. MORTHOLE: Karl Morthole, K-A-R-L,  
 Morthole is M-O-R-T-H-O-L-E. I'm at 57 O Street,  
 San Francisco.

MR. CORRELL: Thank you.

BY MR. KRASS:

Q. Would you please state your full name and  
 address for the record.

A. It's Kenneth Warren Anderson. I'm -- my  
 address is 5049 St. Dunstan Court, Concord,  
 California 94521.

Q. Who is your current employer?A. Chevron Products Company.

Q. Have you ever been deposed before?

A. I have.

Q. And approximately how many times?

A. Three that I recall.

Q. And when was the last time that you were  
 deposed?

A. I was deposed, I think, about a year ago.

Q. And what did that case involve generally?

A. The -- the similar topic, MTBE, gasoline.

Anderson, Kenneth Warren - Chevron - Warnings (06/20/2007)

39

provide to its dealers and jobbers with respect to  
 proper handling and storage of gasoline containing  
 MTBE?

A. Well, again, the instruction that we  
 provided to our jobbers and dealers was about  
 gasoline, not gasoline with MTBE, because it really  
 doesn't matter to us. If they're good gasoline  
 product stewards, it really doesn't matter what's in  
 the project -- or product.

But again, we reminded them that gasoline  
 was a dangerous product that needed to be handled  
 carefully, they needed to keep accurate inventory  
 records, they needed to inspect their equipment,  
 look for problems, check for leaks, they need to  
 check for water. They need to follow all the local  
 government laws and regulations. If they spill it,  
 they need to clean it up quickly and notify all the  
 appropriate parties.

And we told them that once they notified  
 all the appropriate parties, then the appropriate  
 expertise in the area of regulation and  
 investigation would -- would get involved.

Q. Your listing of points here under  
 instruction, are these all of the necessary action  
 required to practice good gasoline product

Anderson, Kenneth Warren - Chevron - Warnings (06/20/2007)

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-X

In Re: : Master File No.  
 Methyl Tertiary Butyl Ether : 1:00 - 1898  
 ("MTBE") Products Liability : MDL No. 1358(SAS)  
 Litigation : M21-88

-X

Videotaped Deposition of MICHAEL ROMAN

Washington, D.C.

Wednesday, March 28, 2007

9:25 a.m.

Job No.: 1-100226

Pages 1 through 177

Reported by: Cynthia R. Simmons Ott, RMR, CRR

Roman, Michael- ExxonMobil- Warnings (03/28/2007)

10

transcript.)

BY MS. SANCHEZ:

Q. This is the deposition notice for what  
you're about to provide testimony on in Warnings  
on behalf of Heritage Mobil and ExxonMobil  
Corporation. Have you seen this document before?

A. Yes, I have.

Q. And are you prepared to -- and you  
understand that you're being designated as a  
corporate representative?

A. Yes, I did. Yes, I understand that.

Q. Just to make the record clearer and for  
purposes of convenience, I'll just -- when I refer  
to Mobil it will be Heritage Mobil, and then we'll  
just, ExxonMobil, will just shorten it from  
ExxonMobil Corporation for post merger. Is that  
okay with you?

A. Sounds fine, thank you.

Q. Okay. If there's any time that you have a  
question about it, just let me know, and we'll  
make it clear. And for the record, were you a  
Heritage Mobil employee, is that where you started  
your career with ExxonMobil?

A. Yes.

Roman, Michael- ExxonMobil- Warnings (03/28/2007)

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would require immediate remediation.

BY MS. SANCHEZ:

Q. Did Mobil ever warn or notify stations,  
service stations or customers, that gasoline  
containing MTBE should be handled differently than  
gas without MTBE?

A. No, we did not.

Q. Did Mobil have a position as to whether  
gasoline containing MTBE should be handled  
differently than gasoline without MTBE?

A. In the review of all the documents that I  
went through and the individuals that I spoke to,  
I can say that we viewed gasoline as being the  
primary product that we sold and no difference in  
the way we would handle gasoline with or without  
MTBE.

Q. I'm going to ask you some of the same  
questions, but on behalf of ExxonMobil.

A. Sure.

Q. I just wanted to have them separated for  
the record.

A. Okay.

Q. Did ExxonMobil ever notify its service  
station owners or customers that they should test

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or other customers that MTBE is relatively  
difficult and expensive to clean up or remediate?

MR. BONGIORNO: Objection.

THE WITNESS: What does "relatively" mean?

BY MS. SANCHEZ:

Q. More difficult than cleaning up VTech's  
constituents?

A. I'm not sure I can answer that question.  
It's not, it's not a warning issue that I -- as  
far as I can see, and I'm not sure I can  
understand or properly respond to a question about  
relative cost, since that may be defined  
differently by different people.

Q. Did ExxonMobil ever notify in writing to  
its station, to station owners, or to ExxonMobil  
customers, that MTBE is more difficult and more  
expensive to clean up or remediate than  
conventional gasoline?

MR. BONGIORNO: Objection. You can  
answer.

THE WITNESS: To the best of my knowledge,  
no. Again, gasoline is the issue for us.

BY MS. SANCHEZ:

Q. Did ExxonMobil notify in writing to

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1 service stations or to its customers that gasoline  
2 containing MTBE should be handled differently than  
3 gasoline without MTBE?

4 A. No, we did not.

5 Q. We reviewed several MSDS sheets for MTBE  
6 and MTBE containing gasoline for Mobil and for  
7 ExxonMobil. In review and in preparation for your  
8 deposition, did Mobil, in its MSDSes, advise its  
9 customers who purchased MTBE gasoline that they  
10 should test for the presence of MTBE when gasoline  
11 contamination is discovered at a site?

12 A. We did not.

13 Q. And the same question for ExxonMobil.

14 A. Same thing for ExxonMobil, they don't test  
15 for components, and quite frankly, they don't  
16 test, they look, to let us know that there's a  
17 leak, and if there's a leak, we will provide the  
18 resources necessary to determine whether a leak  
19 has occurred and begin the remediation where we  
20 own tanks and pumps.

21 Q. For customers of Mobil that were  
22 responsible for their own remediation, did Mobil  
23 advise them to test for the presence of MTBE when  
24 gasoline is discovered at a site?